सर्वे
भवन्तु सुखिनः

Important Instructions/Guidelines

National Human Rights Commission
New Delhi

Community Health Cell

Library and Information Centre

367, "Srinivasa Nilaya"
Jakkasandra 1st Main,
1st Block, Koramangala,
BANGALORE - 560 034.

Phone : 553 15 18 / 552 53 72
e-mail : chc@sochara.org

Important Instructions/Guidelines

(Revised Edition)

National Human Rights Commission
Sardar Patel Bhawan
New Delhi

Dr. Justice A.S. Anand
Chairperson
(Former Chief Justice of India)

27 October, 2004

Foreword

Human Rights are those basic rights which inhere in every individual by virtue of being born as a member of the human family. These are non-negotiable and non-derogable. As a commitment of India's concern for the protection and promotion of human rights, the National Human Rights Commission was established under the Protection of Human Rights Act, 1993. In consonance with the functions spelt out in the Act, the Commission's main focus has been to strengthen the extension of human rights– civil, political, economic, social and cultural, to all sections of society and recommend measures for their effective implementation.

Since the inception of the Commission on 12 October 1993, it has been receiving innumerable complaints against the public authorities who allegedly abuse and misuse their power to violate the human rights of innocent people. For dealing with the same, the Commission has been issuing instructions and guidelines from time to time for guidance of public servants and others. Pursuant to the Commission's efforts, a compilation of all the important instructions/guidelines issued to various authorities was brought out as a publication in the year 2000. Since then more instructions and guidelines have been issued by the Commission. Accordingly, the Commission is now bringing out a revised edition of the publication by incorporating various instructions/guidelines issued by it till February 2004. I hope the revised compilation would prove beneficial not only to the public servants but also scholars, social workers and human rights activists all over the country.

(A.S. ANAND)

List of Important Instructions/Guidelines Issued by the National Human Rights Commission from October 1993 to February 2004

I. On Custodial Deaths/Rapes

Reporting of Custodial Deaths/Rapes

Letter to all Chief Secretaries on the reporting of custodial deaths/rapes within 24 hours

No. 66/SG/NHRC/93

National Human Rights Commission
Sardar Patel Bhavan
New Delhi

From : **R.V. Pillai**
Secretary General

14 December, 1993

To : Chief Secretaries of all States
and Union Territories

Sir/Madam,

The National Human Rights Commission at its meeting held on the 6th instant discussed the problems of custodial deaths and custodial rapes. In view of the rising number of incidents and reported attempts to suppress or present a different picture of these incidents with the lapse of time, the Commission has taken a view that a direction should be issued forthwith to the District Magistrates and Superintendents of Police of every district that they should report to the Secretary General of the Commission about such incidents within 24 hours of occurrence or of these officers having come to know about such incidents. Failure to report promptly would give rise to presumption that there was an attempt to suppress the incident.

2. It is accordingly requested that the District Magistrates/Superintendents of Police may be given suitable instructions in this regard so as to ensure prompt communication of incidents of custodial deaths/custodial rapes to the undersigned.

Yours faithfully,

Sd/-

(R. V. Pillai)

Letter to all Chief Secretaries clarifying that not only deaths in police custody but also deaths in judicial custody be reported

R.V. Pillai
Secretary General

F. No. 40/3/95-LD
राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

June 21, 1995

To

Chief Secretaries of all States and
Union Territories

Sir/Madam,

Vide letter No. 66/SG/NHRC/93 dt. December 14, 1993, you were requested to give suitable instructions to DMs/SPs to ensure prompt communication of incidents of custodial deaths/custodial rapes.

2. A perusal of the reports received from DMs/SPs in pursuance of the above mentioned communication reveals that reports are received in the Commission from some of the States, only on deaths in police custody. The objective of the Commission is to collect information in respect of custodial deaths in police as well as judicial custody. May I, therefore, request you to have instructions sent to all concerned to see that deaths in judicial custody are also reported to the Commission within the time frame indicated in my letter of December 14, 1993?

Yours faithfully,

Sd/-

(R. V. Pillai)

Post-mortem Examinations in Cases of Deaths in Custody

Letter to Chief Ministers of States on the video filming of post-mortem examinations in cases of custodial deaths

Justice Ranganath Misra
Chairperson

August 10, 1995

My dear Chief Minister,

The National Human Rights Commission soon after its constitution in October, 1993, called upon the law and order agencies at the district level throughout the country to report matters relating to custodial death and custodial rape within 24 hours of occurrence. Since then ordinarily reports of such incidents have been coming to the Commission through the official district agencies. The Commission is deeply disturbed over the rising incidents of death in police lock-up and jails. Scrutiny of the reports in respect of all these custodial deaths by the Commission very often shows that the post-mortem in many cases has not been done properly. Usually the reports are drawn up casually and do not at all help in the forming of an opinion as to the cause of death. The Commission has formed an impression that a systematic attempt is being made to suppress the truth and the report is merely the police version of the incident.

The post-mortem report was intended to be the most valuable record and considerable importance was being placed on this document in drawing conclusions about the death.

The Commission is of a *prima-facie* view that the local doctor succumbs to police pressure which leads to distortion of the facts. The Commission would like that all post-mortem examinations done in respect of deaths in police custody and in jails should be video-filmed and cassettes be sent to the Commission along with the post-mortem report. The Commission is alive to the fact that the process of video-filming will involve extra cost but you would agree that human life is more valuable than the cost of video-filming and such occasions should be very limited.

We would be happy if you would be good enough to immediately sensitise the higher officials in your state police to introduce video-filming of post mortem examination with effect from 1st October, 1995.

We look forward for your response within three weeks.

With regards.

Yours sincerely,

Sd/-

(Ranganath Misra)

To
Chief Ministers of all States, Pondicherry & the National Capital Territory of Delhi/Governors of those States under the President's rule.

Letter to Chief Ministers/Administrators of all States/Union Territories with a request to adopt the Model Autopsy Form and the additional procedure for inquest

Justice M.N. Venkatachaliah
Chairperson
(Former Chief Justice of India)

No. NHRC/ID/PM/96/57
राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

March 27, 1997

Dear

May I invite your kind attention to a matter which NHRC considers of some moment in its steps to deal with custodial deaths? The Commission on the 14th December, 1993 had issued a general circular requiring all the District Magistrates and the Superintendents of Police to report to the Commission, incidents relating to custodial deaths and rapes within 24 hours of their occurrence. A number of instances have come to the Commission's notice where the post-mortem reports appear to be doctored due to influence/pressure to protect the interest of the police/jail officials. In some cases it was found that the post-mortem examination was not carried out properly and in others, inordinate delays in their writing or collecting. As there is hardly any outside independent evidence in cases of custodial violence, the fate of the cases would depend entirely on the observations recorded and the opinion given by the doctor in the post-mortem report. If post-mortem examination is not thoroughly done or manipulated to suit vested interests, then the offender cannot be brought to book and this would result in travesty of justice and serious violation of human rights in custody would go on with impunity.

With a view to preventing such frauds, the Commission recommended to all the States to video-film the post-mortem examination and send the cassettes to the Commission.

It was felt that the Autopsy Report forms now in use in the various States, are not comprehensive and, therefore, do not serve the purpose and also give scope for doubt and manipulation. The Commission, therefore, decided to revise the autopsy form to plug the loopholes and to make it more incisive and purposeful.

The Commission, after ascertaining the views of the States and discussing with the experts in the field and taking into consideration, though not entirely adopting, the U.N. Model Autopsy protocol, has prepared a Model Autopsy Form enclosed as Annexure-I.

In this connection, it was felt that some incidental improvements are also called for in regard to the conduct of inquests. For proper assessment of "time since death" or

'the time of death', determination of temperature changes and development of *Rigor Mortis* at the time of first examination at the scene is essential. This can conveniently be done by following some easily understandable and implementable procedure. The procedure to be followed by those in charge of inquest, is indicated in Annexure-II to this letter. This is a small but important addition to the inquest procedure.

The Commission recommends your Government to prescribe the Model Autopsy Form (Annexure-I) and the additional procedure for inquest as indicated in Annexure-II, to be followed in your State with immediate effect.

I shall look forward to your kind and favourable response.

Yours sincerely,

Sd/-

(M.N. Venkatachaliah)

To

Chief Ministers/Administrators of all States/Union Territories.

ANNEXURE-I

MODEL POST-MORTEM REPORT FORM
(Read carefully the instructions at Appendix 'A')

NAME OF INSTITUTION _____

Post-Mortem Report No. _____ Date _____

Conducted by Dr. _____

Date & Time of receipt of the body
and Inquest papers for Autopsy _____

Date & Time of commencement of Autopsy _____

Time of completion of Autopsy _____

Date & Time of examination of the dead body
at Inquest (as per Inquest Report) _____

Name & Address of the person _____
video recording the Autopsy _____

Note : The tape should be duly sealed, signed and dated and sent to the National Human Rights Commission, Sardar Patel Bhawan, Sansad Marg, New Delhi.

CASE PARTICULARS

1. (a) Name of deceased and as entered
in the Jail or Police record _____

(b) S/o, D/o, W/o _____

(c) Address : _____

2. Age (Approx.) : _____ yrs; Sex: Male/Female

3. Body brought by (Name and rank of Police officials)
(i) _____

(ii) _____

of Police Station _____

4. Identified by (Name & addresses of relatives/persons acquainted)

(i) _____

(ii) _____

IF HOSPITAL, DEAD BODIES - (particulars as per hospital records)

Date & Time of Admission in Hospital _____

Date & Time of Death in Hospital _____

Central Registration No. of Hospital _____

SCHEDULE OF OBSERVATIONS

(A) GENERAL

(1) Height _____ cms. (2) Weight _____ Kgs.

(3) Physique - (a) lean / medium / obese

(b) Well built/average built/poor built/emaciated

(4) Identification features (if body is unidentified)

(i) _____

(ii) _____

(iii) Finger prints be taken on separate sheet and attached by the doctor.

(5) Description of clothes worn - important features:

(6) Post-mortem Changes:

(a) As seen during inquest

- Whether *rigor mortis* present _____
- Temperature (Rectal) _____
- Others _____

(b) As seen at Autopsy -

(7) (a) External general appearance -

(b) State of eyes

(c) Natural orifices

(B) EXTERNAL INJURIES:

(Mention Type, Shape, Length x Breadth & Depth of each injury and its relation to important body landmark. Indicate which injuries are fresh and which are old and their duration.)

Instructions :-

(i) Injuries be given serial number and mark similarly on the diagrams attached.
(ii) In stab injuries, mention angles, margins and direction inside body.
(iii) In fire arm injuries, mention about effects of fire also.

(C) INTERNAL EXAMINATION

1. HEAD

(a) Scalp findings

(b) Skull (Describe fractures here & show them on body diagram enclosed)

(c) Meninges, meningeal spaces & Cerebral vessels
(Haemorrhage & its locations, abnormal smell etc. be noted)

(d) Brain findings & Wt. (Wt. _____ gms.)

(e) Orbital, nasal & aural cavities - findings.

2. NECK

- Mouth, Tongue & Pharynx
- Larynx & Vocal cords
- Condition of neck tissues
- Thyroid & other cartilage conditions
- Trachea

3. CHEST

- Ribs and Chest wall
- Oesophagus
- Trachea & Bronchial Tree
- Pleural Cavities - R -

  - L -

  Lungs findings & Wt. - Rt. _____ gms. & Lt. _____ gms.

- Pericardial Sac

- Heart findings & Wt. _____

- Large blood vessels

4. ABDOMEN

- Condition of abdominal wall

- Peritoneum & Peritoneal cavity

- Stomach (wall condition, contents & smell) (Weight _____ gms.)

- Small intestines including appendix

- Large intestines & Mesentric vessels

- Liver including
  gall bladder (wt. _____ gms.)

- Spleen (wt. _____ gms.)

- Pancreas

- Kidneys finding & Wt. - Rt _____ gms. & Lt. _____ gms.

- Bladder & Urethra

- Pelvic cavity tissues

- Pelvic Bones

- Genital organs (Note the condition of vagina, scrotum, presence of foreign body, presence of foetus, semen or any other fluid, and contusion, abrasion in and around genital organs).

5. **SPINAL COLUMN & SPINAL CORD** (To be opened where indicated)

OPINION

i) Probable time since death (keep all factors including observations at inquest)

ii) Cause & manner of death - The cause of death to the best of my knowledge and belief is:-

(a) Immediate cause -

(b) Due to -

(c) Which of the injuries are ante-mortem/post-mortem and duration if ante-mortem?

(d) Manner of causation of injuries

(e) Whether injuries (individually or collectively) are sufficient to cause death in ordinary course of nature or not?

iii) Any other

SPECIMENS COLLECTED & HANDED OVER (Please tick)

a) Viscera (Stomach with contents, small intestine with contents, sample of liver, kidney (one half of each), spleen, sample of blood on gauze piece (dried), any other viscera, preservative used)

b) Clothes

c) Photographs (Video cassettes in case of custody deaths, finger prints, etc.)

d) Foreign body (like bullet, ligature, etc.)

e) Sample of preservative in cases of poisoning

f) Sample of seal

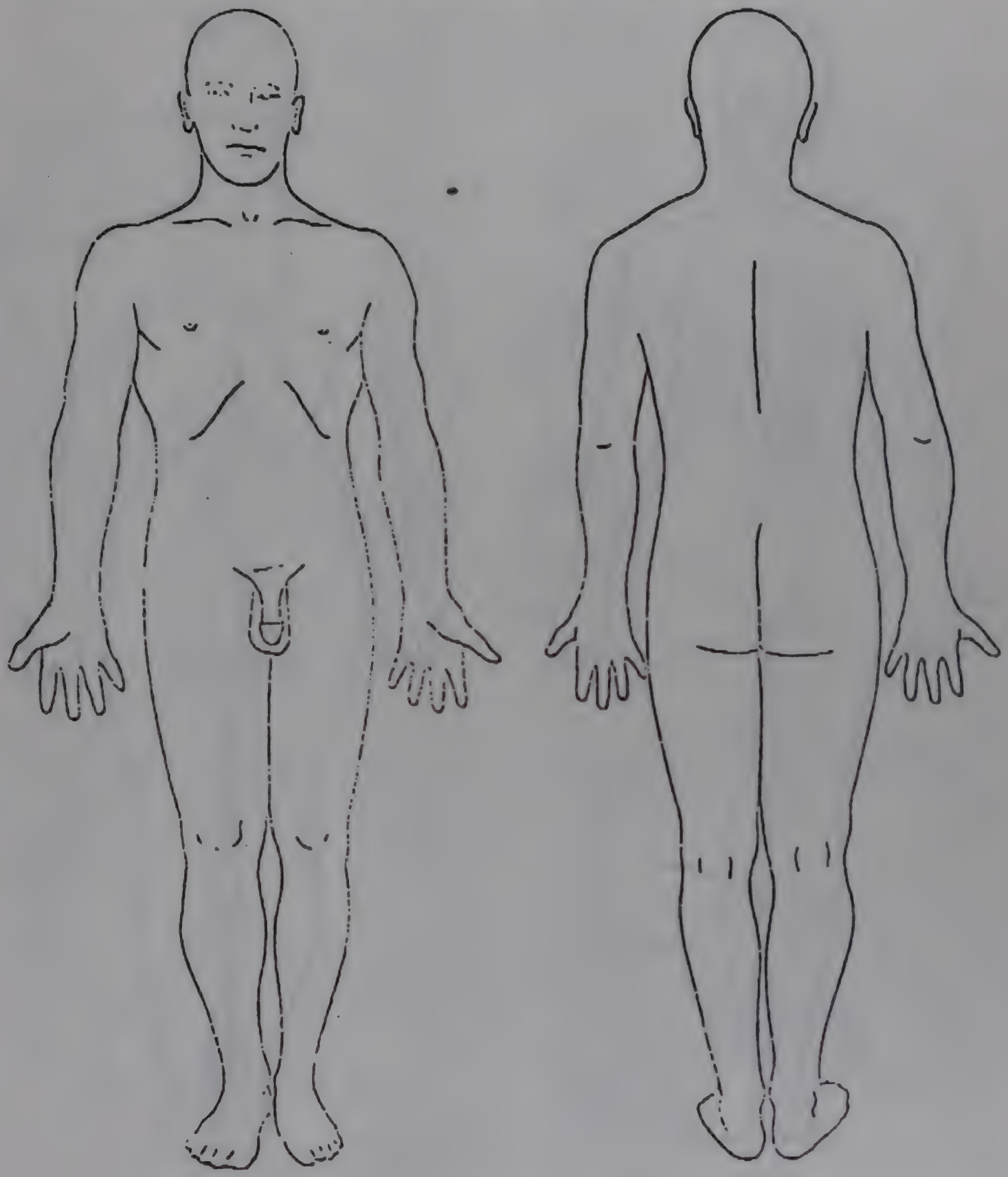
g) Inquest papers (mention total number & initial them)

h) Slides from vagina, semen or any other material

PM report in original,____ inquest papers, dead body, clothings and other articles (mention there) duly sealed (Nos. ___) handed over to police official _____ No. _____ of PS _____ whose signatures are herewith.

Signature : _____
Name of Medical Officer _____
(in block letters) _____
Designation _____
SEAL

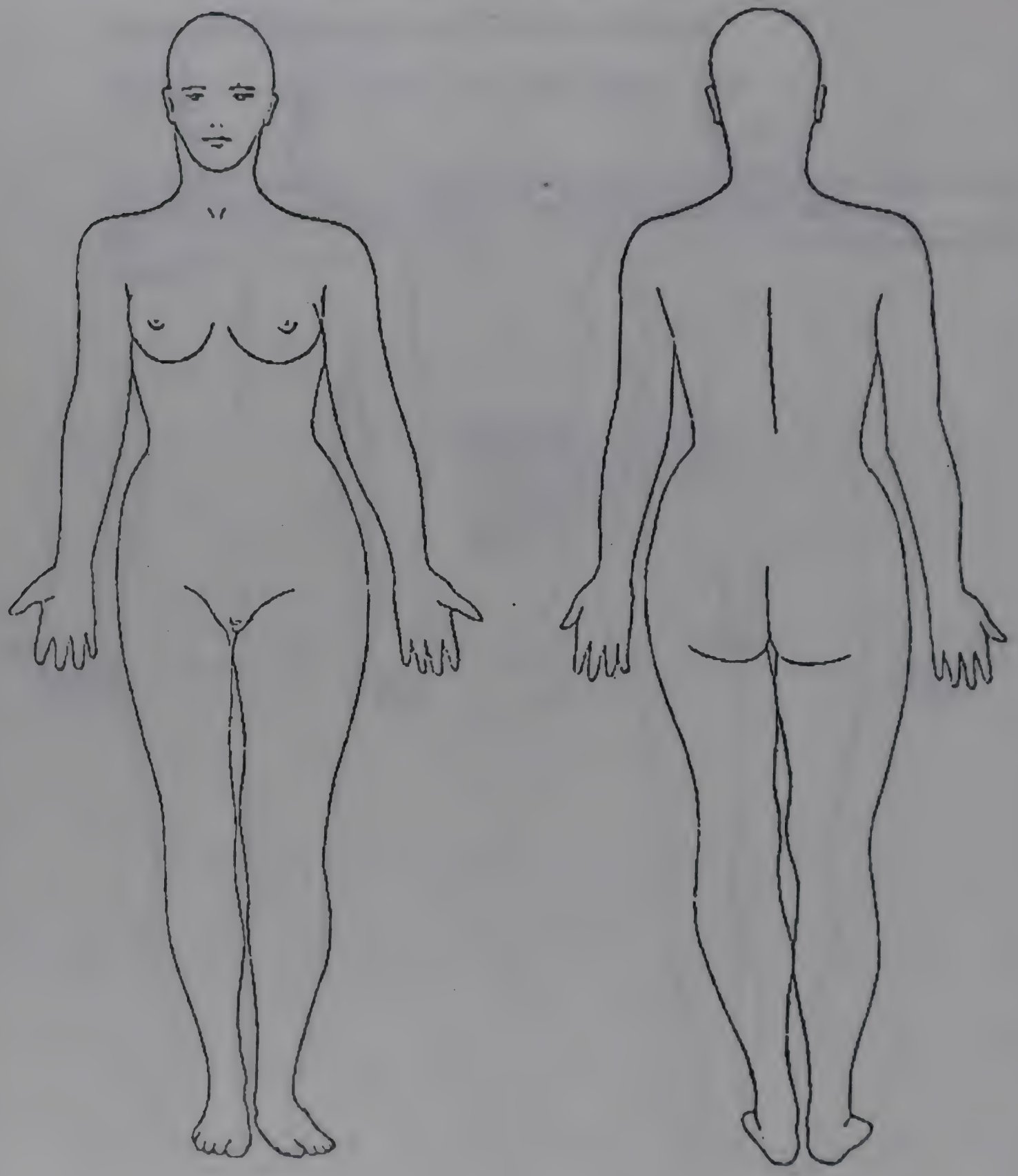
Full Body : Male - Anterior and Posterior Views (Ventral and Dorsal)



Name _____ Case No. _____

Date _____

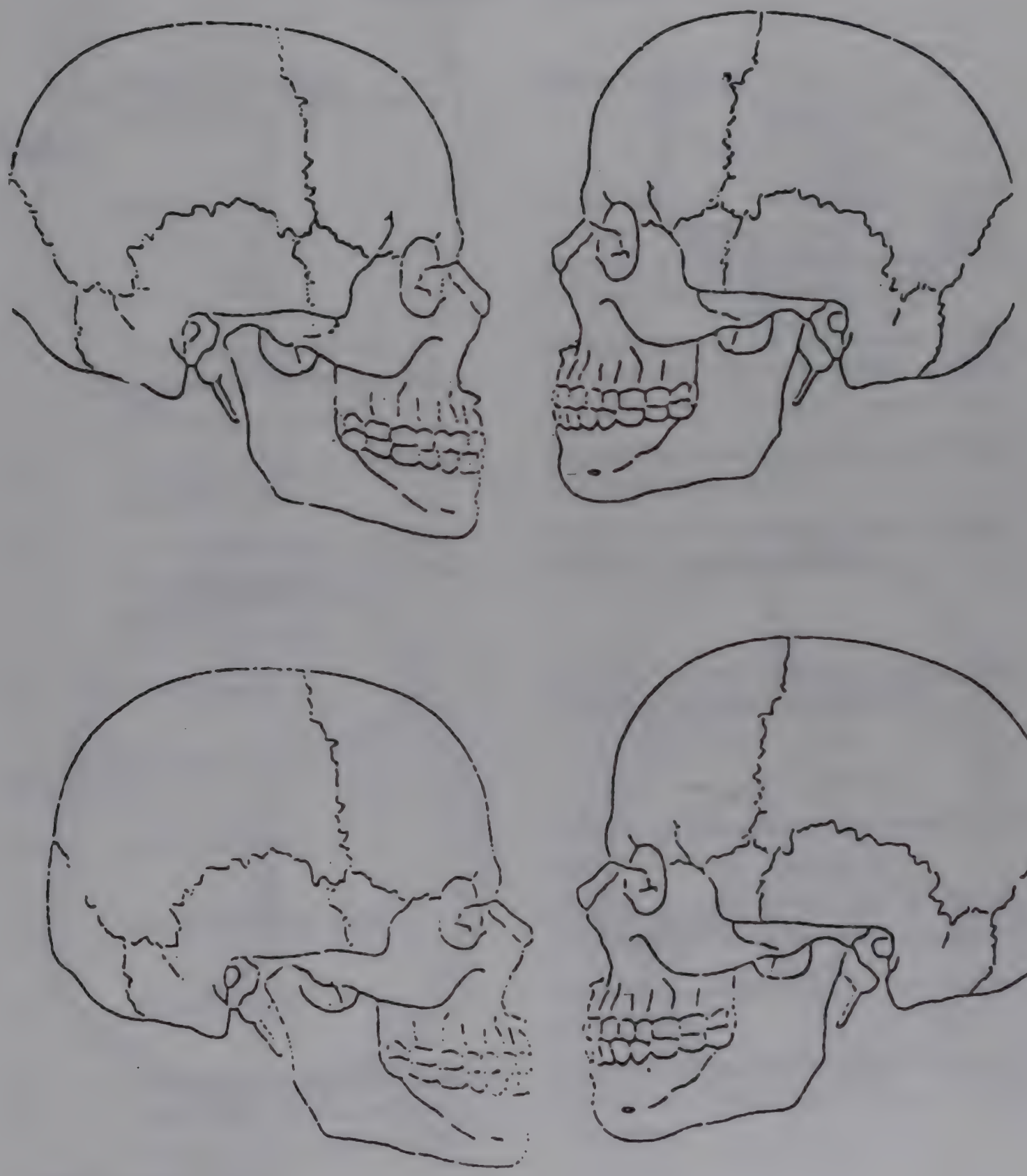
Full Body : Female - Anterior and Posterior Views

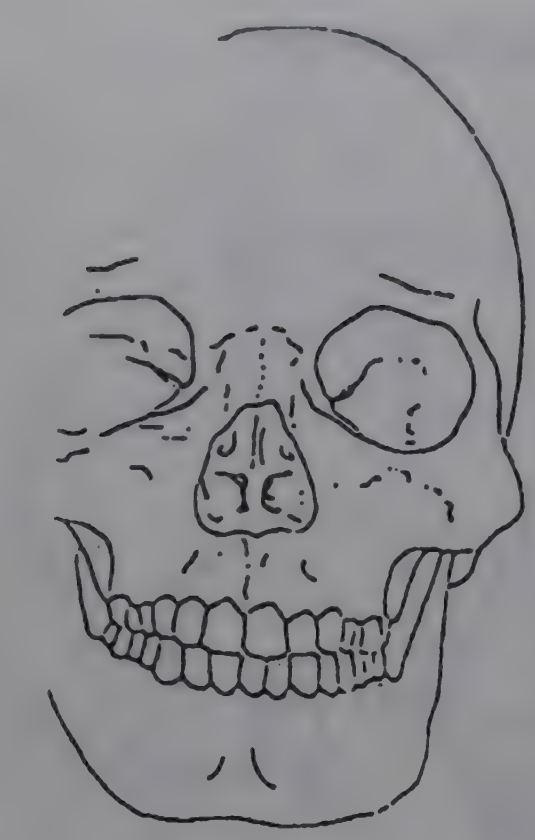


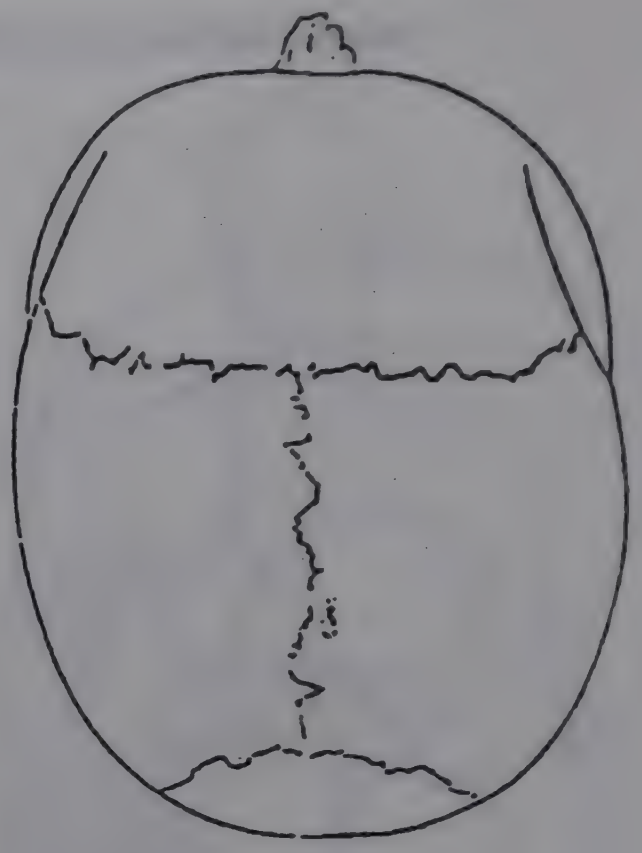
Name _____ Case No. _____

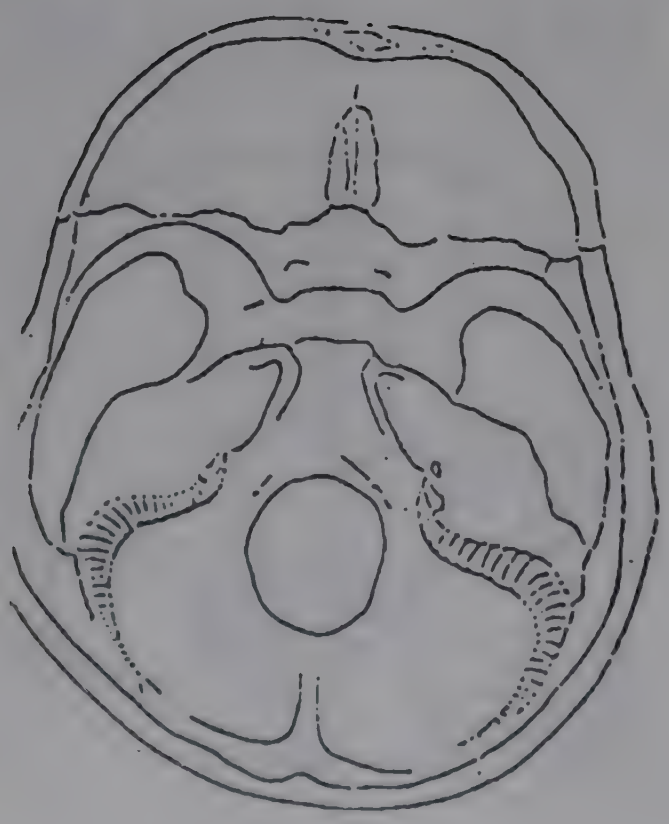
Date _____

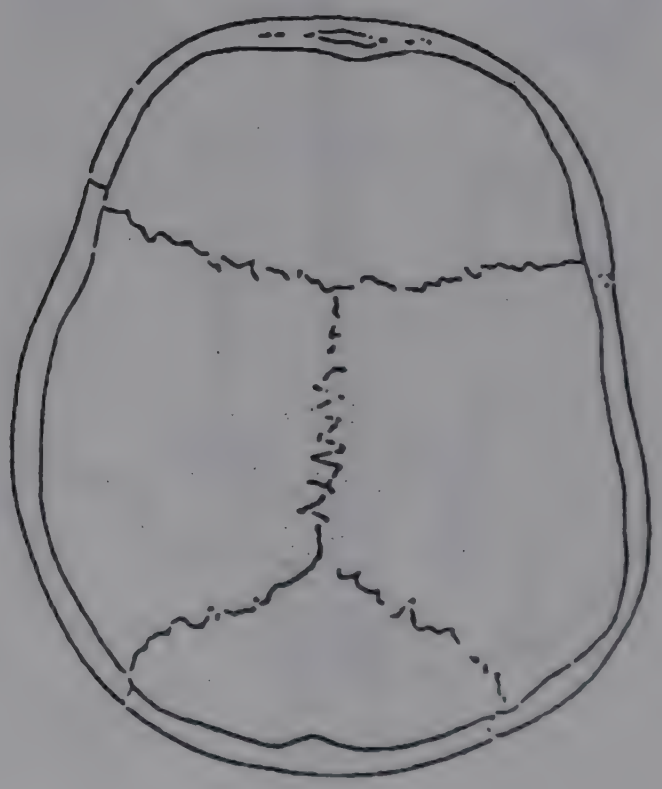
Head - Surface and Skeletal Anatomy : Lateral view











Inner View of Skull

APPENDIX - 'A'

Instructions to be Followed Carefully for Detention or Torture

	Torture technique	Physical findings
Beating		
1.	General	Scars, Bruises, Lacerations, Multiple fractures at different stages of healing, especially in unusual locations, which have not been medically treated.
2.	To the soles of the feet, or fractures of the bones of the feet.	Haemorrhage in the soft tissues of the soles of the feet and ankles. Aseptic necrosis.
3.	With the palms on both ears simultaneously.	Ruptured or scarred tympanic membranes. Injuries to external ear.
4.	On the abdomen, while lying on a table with the upper half of the body unsupported ("operating table").	Bruises on the abdomen. Back injuries. Ruptured abdominal viscera.
5.	To the head.	Cerebral cortical atrophy, Scars, Skull fractures, Bruises, Haematomas.
Suspension		
6.	By the wrists.	Bruises or scars about the wrists. Joint injuries.
7.	By the arms or neck.	Bruises or scars at the site of binding. Prominent lividity in the lower extremities.
8.	By the ankles.	Bruises or scars about the ankles. Joint injuries.
9.	Head down, from a horizontal pole placed under the knees with the wrists bound to the "Jack".	Bruises or scars on the anterior forearms and backs of the knees. Marks on wrists and ankles.

	Torture technique	Physical findings
Near Suffocation		
10.	Forced immersion of head in often contaminated "wet submarine".	Faecal material or other debris in the mouth, pharynx, trachea, oesophagus or lungs, Intra-thoracic petechiae.
11.	Tying of a plastic bag over the head ("dry submarine").	Intro-thoracic petechiae.
Sexual abuse		
12.	Sexual abuse	Sexually transmitted diseases, pregnancy, injuries to breasts, external genitalia, vagina, anus or rectum.
Forced posture		
13.	Prolonged standing.	Dependent edema, Petechiae in extremities.
14.	Forced straddling of a bar ("saw horse").	Perineal or scrotal haematomas.
Electric shock		
15.	Cattle prod.	Burns: appearance depends on the age of the injury. Immediately: red spots, vesicles, and/or black exudate. Within a few weeks: circular, reddish, macular scars. At several months: small, white, reddish or brown spots resembling telangiectasias.
16.	Wires connected to a source of electricity.	
17.	Heated metal skewer inserted into the anus.	Peri-anal or rectal burns.
Miscellaneous		
18.	Dehydration	Vitreous humor electrolyte abnormalities.
19.	Animal bites (spiders, insects, rats, mice, dogs)	Bite marks.

Annexure - II

Additional Inquest Procedure

In order to help in proper assessment of 'Time Since Death', determination of temperature changes and development of *Rigor Mortis* at the time of first examination at the scene is essential. This can be attained in the present system of inquest by examining the dead body at the scene scientifically for these two parameters either by a medical officer or a trained police officer.

Essential requirement for determining Temperature Changes & *Rigor Mortis:*

The procedure is simple and can be learnt by any police officer if he is trained properly at the Police Training institution by a medical officer. This procedure includes:

(i) Taking of 'Rectal Temperature' at the first examination of the body at the scene itself while conducting the inquest. A simple Rectal Thermometre can be inserted in the anus of the dead body. After waiting for 3 to 5 minutes temperature should be read. The temperature so read should be mentioned in the inquest report as also the time of its recording.

(ii) Similarly for determining *'Rigor Mortis'*, i.e., stiffening of the muscles, the police officer should bend the limbs and see whether there is any stiffness in them. The observations about stiffness be mentioned as also the time in the inquest report. These observations would be helpful to the doctors conducting post-mortem examination.

Letter to all Home Secretaries regarding the revised instructions to be followed while sending post-mortem reports in cases of custodial deaths

N. Gopalaswami, IAS
Secretary General

D.O. No. 40/1/1999-2000-CD (NRR)
राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

January 3, 2001

Dear

As you are aware, the Commission had issued general instructions in 1993 that intimation be given to the Commission of any custodial death within 24 hours of its occurrence. These intimations are to be followed with the post-mortem reports, Magisterial Inquest Report/Videography report of the post-mortem etc. However, it is found that there is a considerable delay in sending the post-mortem report along with the videography and the Magisterial Inquest Report.

This causes delay in the Commission in processing the cases of custodial deaths and the awarding of interim relief wherever *prima facie* there is reason to conclude that the custodial death was a result of custodial violence. In order to streamline the procedure, the following instructions are issued:

1.1 The post-mortem report along with the videograph and the Magisterial Enquiry report must be sent within 2 months of the incident.

1.2 The post-mortem reports have to be sent in the new proforma which was circulated vide letter No. NHRC/ID/PM/96/57 dated 27.03.1997. All concerned authorities may be instructed to use the new proforma. A copy of the new proforma* is enclosed for ready reference.

2. In every case of custodial death, Magisterial Enquiry has also to be done as directed by the Commission. It should be ensured that the Magisterial Enquiry is completed as soon as possible but in such a way that within 2 months deadline mentioned in Para 1.1 the Magisterial Enquiry report is also made available.

3. In some cases of custodial death, after post-mortem the viscera is sent for examination and viscera report is called for. However, the viscera report takes some time in coming and therefore, this is to clarify that the post mortem report and other documents should be sent to the Commission without waiting for the viscera report. The viscera report should be sent subsequently as soon as it is received.

* For the new proforma refer to page nos.12 to 25.

Instructions may kindly be issued to all concerned authorities to adhere to the above guidelines.

Thanking you and with Season's Greetings,

Yours sincerely,

Sd/-

(N. Gopalaswami)

To

All Home Secretaries

Letter to Chief Ministers/Administrators of all States/Union Territories communicating the modified instructions regarding videography of post-mortem examinations in respect of deaths in jail

Justice J.S. Verma
Chairperson
(Former Chief Justice of India)

D.O. No. 3/2/99-PRP&P
राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

21st December, 2001

Dear

May I invite your kind attention to the communication dated 10th August, 1995 addressed to you by my predecessor Justice Ranganath Misra regarding videography of post-mortem examinations in respect of cases of deaths in police custody and in jails. I am happy to find a significant impact of the observance of these instructions on the general level of custodial violence in the country.

An analysis of the cases of custodial death reported to the Commission during the last five years by various States has highlighted the need for re-examination of the instructions on videography in cases of death in jails from the aspect of their utility and the practical difficulties pointed out by some of the jail authorities. A scrutiny of the reports has revealed that, while death in police custody is very often a result of custodial violence, majority of deaths reported from jails are due to illness aggravated by negligence in giving proper treatment. Although the Commission views the post-mortem examination as essential even in such cases, it feels, the requirement of videography of the examination can be relaxed to some extent.

The Commission has, therefore, decided to modify its earlier instructions. The instructions regarding videography of post-mortem examinations in respect of deaths in police custody will remain in force as before. The requirement of videography of post-mortem examinations in respect of deaths in jail will be applicable only in the following cases:-

(i) Where the preliminary inquest by the Magistrate has raised suspicion of some foul play.

(ii) Where any complaint alleging foul play has been made to the concerned authorities or there is any suspicion of foul play.

It is requested that these instructions may be passed on to all concerned for future action.

With regards,

Yours sincerely,
Sd/-
(J.S. Verma)

To

Chief Ministers/Administrators of all States/Union Territories.

II. On Encounter Deaths

Letter to Chief Ministers of all States regarding the procedure to be followed in cases of deaths in police encounters

Justice M.N. Venkatachaliah
Chairperson
(Former Chief Justice of India)

राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission
Sardar Patel Bhawan, Sansad Marg,
New Delhi-110001

March 29, 1997

Dear

The Commission has been receiving complaints from the members of the general public and from the non-governmental organisations that instances of fake encounters by the police are on the increase and that police kill persons instead of subjecting them to due process of law if offences are alleged against them. No investigation whatsoever is made as to who caused these unnatural deaths and as to whether the deceased had committed any offences.

2. Complaint Nos. 234 (1 to 6)/93-94 brought before the Commission by the Andhra Pradesh Civil Liberties Committee (APCLC), referred to one such instance. It was stated in the complaint that the police had shot and killed some persons alleging that they were members of the outlawed People's War Group who attempted to kill the police party that was attempting to arrest them. The case of the APCLC, on the other hand, was that these are cases of unjustified and unprovoked murders in what they describe as 'fake encounters'.

3. The practice obtaining in Andhra Pradesh, as perhaps elsewhere also, is that when an encounter death takes place, the leader of the police party engaged in the encounter furnishes information to the Police Station about the encounter and the persons that died. The stand taken by the police in all these cases brought by the APCLC was that the deceased persons, on sighting the police, opened fire at them with a view to killing them and were, therefore, guilty of the offence of attempt to murder under Section 307 IPC. The police justified their firing and killing as done in exercise of their right of self-defence. This information was recorded in the Police Station describing the persons killed by the bullets fired by the police as accused and FIRs were drawn up accordingly. Without any more investigation, the cases were closed as having abated, in view of the death of accused. No attempt whatsoever was made to ascertain if the police officers who fired the bullets that resulted in the killings, were justified in law to doing so, and if otherwise whether and if so what offences were committed by them.

4. Under our laws the police have not been conferred any right to take away the life of another person. If, by his act, the policeman kills a person, he commits the offence of culpable homicide whether amounting to the offence of murder or not unless it is proved that such killing was not an offence under the law. Under the scheme of criminal

law prevailing in India, it would not be an offence if death is caused in the exercise of the right of private defence. Another provision under which the police officer can justify the causing of death of another person, is Section 46 of the Criminal Procedure Code. This provision authorises the police to use force, extending upto the causing of death, as may be necessary to arrest the person accused of an offence punishable with death or imprisonment for life. It is, therefore, clear that when death is caused in an encounter, and if it is not justified as having been caused in exercise of the legitimate right of private defence, or in proper exercise of the power of arrest under Section 46 of the Cr. P.C., the police officer causing the death, would be guilty of the offence of culpable homicide. Whether the causing of death in the encounter in a particular case was justified as falling under any one of the two conditions, can only be ascertained by proper investigation and not otherwise.

5. The validity of the above procedure followed by the police in Andhra Pradesh was challenged before the Commission. After hearing all the parties and examining the relevant statutory provisions in the context of the obligation of the State to conform to Article 21 of the Constitution, the Commission, by its order dated 5.11.1996, found that the procedure followed in Andhra Pradesh was wrong and the Commission laid down and indicated the correct procedure to be followed in all such cases. A copy of the order of the Commission furnishing the reasons and the correct procedure to be followed is enclosed. These recommendations have been accepted by the Andhra Pradesh Government.

6. As the decision of the Commission bears on important issues of Human Rights which arise frequently in other parts of the country as well, the Commission decided to recommend the correct procedure to be followed in this behalf to all the States. The procedure, briefly stated, is as follows:

A. When the police officer in charge of a Police Station receives information about the deaths in an encounter between the Police party and others, he shall enter that information in the appropriate register.

B. The information as received shall be regarded as sufficient to suspect the commission of a cognizable offence and immediate steps should be taken to investigate the facts and circumstances leading to the death to ascertain what, if any, offence was committed and by whom.

C. As the police officers belonging to the same Police Station are the members of the encounter party, it is appropriate that the cases are made over for investigation to some other independent investigation agency, such as State CID.

D. Question of granting of compensation to the dependents of the deceased may be considered in cases ending in conviction, if police officers are prosecuted on the basis of the results of the investigation.

7. May I request you kindly to issue directions, through the Director General of Police, to all the Police Stations in your State to follow the procedure as indicated above in regard to all cases where the death is caused in police encounters and similar situations?

With regards,

Yours sincerely,

Sd/-

(M.N. Venkatachaliah)

To

Chief Ministers of all States.

NATIONAL HUMAN RIGHTS COMMISSION
SARDAR PATEL BHAVAN
SANSAD MARG, NEW DELHI

Name of the complainant : A.P.C.L.C.

File Nos. : 234 (1)/93-94/NHRC
234 (2)/93-94/NHRC
234 (3)/93-94/NHRC
234 (5)/93-94/NHRC
234 (6)/93-94/NHRC

From Naxalbari, a place in the Northern region of West Bengal, under the initial leadership of one Kanhu Sanyal, originated the concept of forcible protest against the social order relating to holding of property and sharing of social benefits. In course of time, it developed into what came to be known as the Naxalite movement. In due course it spread into parts of Bihar, Orissa, Andhra Pradesh and bordering districts of Tamil Nadu, Madhya Pradesh and Maharashtra. Naxalites got divided into different groups-sometimes known by their faith and at other times going by the names of their leaders. In Andhra Pradesh, though initially known as Naxalites, they came to have their identity under the nomenclature of "People's War Group" (PWG) by 1980.

2. It is unnecessary to deal with various groups of the PWG operating in Andhra Pradesh. The activities were broadly the same though the mode varied from group to group and occasion to occasion. At the inception, so far Andhra Pradesh is concerned, Naxalite activities were confined to the district of Srikakulam and bordering areas of Orissa and spread into some of the Telengana districts like Warangal, Karimnagar and Nalgonda.

3. Concentration of activities has mostly been in rural areas but there have been many eventful incidents in urban areas too. Hundreds of innocent villagers and a considerable number of policemen have been done to death by the PWG men, government property has been targetted and very often set on fire causing substantial loss to government, both State and Central and even owners of buildings where public offices were being held in tenanted premises have suffered on this account. Initially, perhaps, attacks were concentrated on the richer groups but later people from the poor classes also did not escape attack, on both person and property. There have been incidents where the male members have been done to death and the female folk have been subjected to physical violence including rape. There was also a case of a man being killed and his head severed from the body, put into a basket and the widow compelled to go round the village with that headload. Normal life and social order had been destroyed/disturbed by such activities and extra legal operations of Naxalite groups is not disputable. The State Government brought in a legislation empowering it to declare

an association to be or to have become unlawful and in exercise of power under Section 3 of this legislation (Andhra Pradesh Public Security Act, 1992), PWG had been declared to be an unlawful association for a specific period. There was a short gap when the ban was not in operation but the ban has now become operative.

4. Since the law and order situation was disturbed by PWG activities, the police started adopting initially stiff and gradually stiffer measures to contain their illegal operations. As PWG people started moving in groups for carrying out their activities, the police also formed groups for counter attack and keeping the illegal activities, under check and control. This led to frequent encounters in which there used to be loss of life and injuries to persons on both sides. Government re-inforced the police force and provided matching sophisticated weapons to them when it was found that some of the members of the PWG were using sophisticated arms and ammunition. PWG groups soon established access for getting land mines and started setting them on several rural roads which killed police parties and destroyed their vehicles. The relationship between the PWG and the police force, therefore, became bitter and totally inimical.

5. APCLC is a non-governmental organisation operating within the state of Andhra Pradesh with headquarters at Hyderabad and is affiliated to PUCL at the national level. It filed a complaint before the Commission on 30th March, 1993 giving particulars of 285 police encounters which it described as fake ones organised by the police to eliminate members of the People's War Group or their supporters and sympathisers instead of subjecting them to the due process of law for punishing the guilty. The complaint was scrutinised in the Registry and it transpired that several of the incidents had happened prior to one year before the making of the complaint and therefore, were beyond the purview of the Commission on account of the special limitation of one year provided under Section 36(2) of the Protection of Human Rights Act, 1993. The complainant, therefore, agreed to confine its complaint to cases within the period of limitation. Ultimately it wanted the Commission to examine the question of fake police encounter in six cases of its choice and gave a list of them being:

1. 234 (1)/93-94/NHRC (case of Kayita Yakaiah)
2. 234 (2)/93-94/NHRC (case of Chinnarapu Sangaiah)
3. 234 (3)/93-94/NHRC (case of Varikuppala Shankaraiah)
4. 234 (5)/93-94/NHRC (case of Badavath Jaitya)
5. 234 (6)/93-94/NHRC (case of Battu Anjaiah & Peddaboyina Saidulu)

6. When notice was issued the State Government denied the plea of fake encounter and sought justification for its action. The response of the State was notified to APCLC and it wanted opportunity of leading evidence to substantiate/establish its stand. The Commission, therefore, agreed to have a sitting at Hyderabad to receive evidence and the State Government on being notified made arrangements for such a sitting from August 21 to 24, 1995.

7. Evidence in five of the cases was recorded from the side of the complainants. In some of these cases, the State led evidence; some documents were exhibited. No evidence was led in case no. 234(4)/93-94/NHRC on the plea that the complainant and his witnesses had been detained by the police at some unknown place. It was agreed that further hearing would take place at Delhi with opportunity to the complainant to produce his witnesses in the case where no evidence was led at Hyderabad. On 21st of September, 1995, the Commission recorded the following proceeding:

"Six cases were picked up by APCLC for evidence to be led and enquiry undertaken by the Commission into what is alleged as police encounter deaths in Andhra Pradesh. These six cases were set down for receiving evidence at Hyderabad from August 21 to August 24, 1995. Evidence in five cases was recorded and witnesses did not turn up in one case. We had given opportunity to the parties to lead evidence if they so liked at Delhi. Today counsel for APCLC has reported that they do not want to lead evidence and press for that case. The enquiry is, therefore, confined to the remaining five cases where evidence has already been recorded...."

8. Pursuant to the aforesaid direction, further hearings were undertaken. Mr. Dipankar Gupta, Learned Solicitor General appeared on the request of the Commission to assist it. Advocate General of Andhra Pradesh on one occasion and the Additional Advocate General on the other argued for Andhra Pradesh and Mr. Sitapati placed the case of the Andhra Pradesh police. Mr. Kannibaran appeared on behalf of the complainant.

9. After we had closed the matter, the judgement of a division bench of the Andhra Pradesh High Court in Writ Petition No. 16868/95 dated 14.8.1995 was produced before us in support of the stand of the petitioner. Commission's Registry reported that a Special Leave Petition had been filed against the decision and the Supreme Court ultimately has granted leave and directed the stay of operation of the judgement.

10. Since the judgement of the High Court had close bearing on the point in issue, we waited for the decision of the Apex Court but as it appears it may take some more time and, therefore, we proceed to formulate our recommendations without waiting any longer.

11. We would like to indicate in brief the facts of the five cases pressed for consideration before us.

I. Case No. 234 (1)/93-94

12. The complainant in this case is Kayita Lachchaiah. Deceased Kayita Yakaiah was neither a member of the Naxalite groups nor had he ever participated in Naxalite activities. There was a pending criminal case against him in a case relating to the burning of RTC bus. He was involved along with 26 others in that case. He was regularly appearing in court in this case. The family had one acre of wet land and about the same extent of dry land which the deceased was cultivating and he was also engaged in lorry loading work with 14 labourers employed under him.

13. On 25.5.1993, after loading four lorries he had come to the village to take bidi leaves and after finishing that job he returned home around 10 p.m. and retired by 11 p.m.. By 1 a.m., 60 to 70 policemen came to the village and when they reached his house, all the members of the family were asleep. Some 30 policemen entered into the house. They lighted a powerful torch which made PW 3 wake up. When he shouted, the other members of the family were aroused from sleep. They identified Kumaraswamy, Sub-Inspector of Police who was then trying to take out Yakaiah. When the members of the family prevented his being taken away, force was applied by the police. On 26.5.1993 and the day following, PWs 1 and 3 accompanied by the Village Sarpanch (PWG) and some others went to the neighbouring police stations to ascertain the whereabouts of the deceased. He was alleged to have been killed at 9 a.m. on 26.5.1993 within Eturnagaram Police Station limits. PWs 1 and 2, who were respectively father and mother of the deceased, were informed about the killing of the deceased in the hands of the police. The police version was that the deceased was an un-identified naxalite notwithstanding the fact that he was arrested by the police in the pending case and had been appearing in the court on the fixed dates. Madhusudan, Sub-Inspector of Police of Mangapet Police Station (RW 1), who led the raiding party which participated in the alleged encounter accepted in cross-examination that many of the Naxalites he confronted were wearing olive green uniform but the deceased was not in such uniform. The inquest report shows that the deceased was wearing a lungi and a shirt. PW 4, sister of the deceased, stated to the Commission that police had made serious attempts to keep the witnesses away from the Commission and to give effect to their designs, the widow of the deceased and PW 4 herself had been forcibly taken by the police to the village of the deceased about 140 kms. from their own place. The police witnesses accepted the position that there were 24 policemen and 12 naxalites involved in the alleged encounter. The firing went on for half an hour in broad day light, and the distance between the two parties was only 50 yards. Yet no policeman sustained any injury while all the alleged naxalites were killed. The deceased, as would appear from the post-mortem report (Exhibit R 7) had three fractured bones; obviously these could not have been caused by gun fire and could fit into the position that the deceased had sustained injuries on account of torture and was later killed. It has been contended that this position is also suggestive of the fact that the deceased had been taken to the police station, assaulted there and later was shot dead. The bullet injuries are on the upper part of the body - the chest, shoulder, etc - which is indicative of the fact that the intention was to kill.

14. Counsel for the complainant contended that the oral and documentary evidence on record lead to the following conclusions:

I. The deceased was not a naxalite but a peasant and a lorry loading worker by occupation.

II. There was only one criminal case of arson against him pending on the date of occurrence.

III. He had been taken into police custody from his house in the presence of many witnesses and had been killed in the alleged encounter.

IV. The Magisterial enquiry was delayed for a long period and was completed only when the Commission decided to include this case within the ambit of enquiry.

V. Serious attempt was made by the police to keep the witnesses away from the Commission.

15. We have read through the evidence and *prima facie* the conclusions suggested above, in our opinion, are borne out by the evidence.

II. Case No. 234 (2)/93-94

16. Deceased Sangaiah was a resident of village Varigunthan in Medak District of Andhra Pradesh and was an activist of CPI(ML). On 25th May, 1993, he went to his own agricultural lands, took the meal brought there by his wife and he again went to Varigunthan, sent word to his wife and they met in the field. According to the complainant, the deceased was taken away by the police from the place of work and was shot dead. The version of the incident by the respondent was that while combing the local forest area they found a group of extremists and an encounter followed at about 5 a.m. and in the exchange of fire the deceased died.

17. The complainant examined four witnesses to support the version and the State examined one witness. The complainant's witnesses stated that the deceased was shot dead in the alleged encounter. Mr. Sitapati cross-examined the complainant's witness at length. The evidence of the witness, which has been stated to be natural, has been asked to be brushed aside. RW-1 is the then Inspector of Police, Medak Circle. From his cross-examination it appears that he was also the Investigating Officer of the case registered on his report. It is the admitted position that while on complainant's side there has been death, on the side of the police there was not even a single abrasion caused by the alleged exchange of fire. The autopsy report indicates three gun shot injuries and an abrasion on the person of the deceased. On a close scrutiny of the evidence, *prima facie* it appears that the evidence of picking up the deceased from the rural agricultural field has not been taken. The complainant himself assumed the role of Investigating Officer with a view to hampering an adequate investigation.

III. Case No. 234 (3)/93-94

18. Varikuppala Shankaraiah, was not involved in any Naxalite activity nor had he been arrested or even mentioned in any police record. Three years before his death, he shifted from his paternal to the maternal village Inolu in Achampet Mandal with a view to helping his uncle in the construction of a school building. After the work was over, he stayed on as a mason in the village along with his wife. The deceased was constructing the house

of one Madavath Madhya by June, 1993. In the morning of 5.6.1993, the deceased and his wife, PW 1, left the village to reach the hamlet where they had undertaken work. Around 6 p.m., Shantamma came back alone to Inolu and told PW 1 that the deceased had gone to Achampet government hospital to get the treatment of his leg injury. On his return by bus, near the check post outside Achampet, four policemen in plain clothes forced him to get down from the bus. On 6.6.1993 Shantamma and PW 1 made enquiries at Achampet and Amrabad Police Stations, but the police told them that they knew nothing about the arrest of the deceased. The leader of the police party, who participated in the alleged encounter resulting in the death, sent information to the Amrabad Police Station at 7 a.m. on 6.6.1993 about the occurrence in which the deceased had been killed. There is evidence to show that the wife and the relatives were not informed about the incident and they came to know about it through newspaper and when they went to see the body, they saw several injuries apart from those caused by gun shots. The post-mortem report referred to three contusions, one of which was close to the eye. The post-mortem Doctor, stated that these injuries could have been caused by a blunt weapon. A Magisterial enquiry had been held where PWs 5,6 and 10 before us had given evidence. The Magisterial enquiry had not been completed for more than 2 years. The Inspector of Police, RW-1, who led the raiding party, himself became the Investigating Officer. He admitted in cross-examination that the deceased was not wanted in any criminal case by the police. The deceased was wearing a white pant and a pink coloured shirt and not the olive green uniform usually worn by the PWG activists. Pressure had been put on some of the witnesses examined by us in the left over Magisterial enquiry. The evidence of PW-1 clearly indicates that there were 17 policemen and 10 to 12 Naxalites in the alleged encounter. The exchange of fire is said to have taken place for half an hour. The distance between the police and the Naxalites was about 50 yards and yet there was no injury to the policemen.

IV. Case No. 234 (5)/93-94

19. One Badavath Jaitya, son of PW-1 is the deceased, Badavath Jagni, wife of the deceased is PW-2. The deceased is claimed not to be a Naxalite but he had been implicated in cases connected with Naxalite activities because local landlords had given false information to the police. He had surrendered to the police and Government had given him 12 bicycles to run a cycle taxi shop but he sold the bicycles as he could not run it. His family land was sold and he was making arrangements with the money thus obtained to go to the Gulf countries. From 1989 onwards, the deceased was busy in his efforts for going over to the Gulf countries. He was in Bombay for most of the time and had come to the village only 5 to 6 times in those four years. He was away and did not appear in the pending cases; so non-bailable warrants were taken out. On a joint application of his and his wife, Government had sanctioned a house loan. The deceased had, therefore, come from Bombay to complete the transaction preceding the obtaining of the loan. He was killed within 2 days of his return on 2nd October, 1993. The deceased was taken by four people, who had come on two scooters, to one side of the road and he was directly shot dead. One of these four men went in a vehicle and came back with many

policemen in a jeep and a van. When the deceased was forcibly taken, no one mentioned that there was a warrant against him to be executed. The records produced by the police before the Commission show that the deceased had surrendered to the police in response to an appeal made by the State Chief Minister to Naxalites on 9th August 1989. While he was in jail, he was shown as involved in three cases in all. The Investigating Officer, RW-2, admitted before the Commission that when he proceeded to enquire into the case, no local man supported the police stand.

V. Case No. 234 (6)/93-94

20. On November 1, 1993, Anjaiah belonging to village Kambalapalli of Warrangal District along with Saidulu was going on a motor cycle. By the time they reached the outskirts of Mahabubabad it was around 9 p.m.. The police party led by the Deputy Superintendent of Police Akula Ramakrishna killed the two persons on the motorcycle in a fake encounter. The police came forward with the story that they received information through VHF set that a police picket at Matpally in Karimnagar district had been blasted by two motorcycle borne extremists and that the Deputy Superintendent of Police, Mahabubabad alerted all the police stations under his jurisdiction and he led a police party to check the vehicular traffic on the outskirts of Mahabubabad and around 9.30 p.m. they tried to stop a motorcycle coming from Nellikiduru road and the driver and the pillion rider in an attempt to evade the police fell in a ditch, and the pillion rider took position behind the bushes and fired three rounds and in self defence the police party fired 38 rounds and that the motorcycle driver and pillion rider died of gun-shot injuries. PWs 1 and 3 are eye witnesses to the occurrence. Anjaiah was a sympathiser of the CPI (ML) and he was acting as an elderly person in the area, conducting arbitration of disputes and was bringing public issues to the notice of the authorities concerned for solution.

21. Around 8 p.m. on November 1, 1993, while he was coming on foot from B.T. road he saw a jeep coming from Mahabubabad with head lights on and a motorcycle coming from opposite direction. He saw the Head Constable and Sub-Inspector of Police getting down from the jeep. They caught hold of the motorcycle driver as also the pillion rider and within 5 minutes killed them. The gun shot injuries on Saidulu, one of the deceased, clearly indicate that the shot entered from his backside which fits into the case of the complainant. The distance between the place where the blast had taken place and the place of the incident would be around 300 kms. It is indeed very difficult to cover the same in two and a half hours by motorcycle.

22. In order to appreciate the material placed before the Commission and reach the conclusion as to whether there was a true encounter or a fake one, we shall have to assess the evidence. Broad features have to be looked into and on the analysis of the material before the Commission, it has to be found out whether the stand of the police is correct or not. Mr. Sitapati has taken the stand that the allegation of encounter was true and there was no scope to hold that they were fake ones. We have already pointed out the several features relevant to the issue while dealing with the facts of each case.

Prima facie the version of the complainant appears to be nearer truth but we would not like to come to any definite conclusion as the cases have got to be investigated and truth has to be ascertained.

23. Reliance has been placed on Section 46 of the Code of Criminal Procedure and in support of the contention that the persons who have been killed were involved in criminal cases, warrants for arrest had been issued and the police had the right to use force, which could extend upto causing of death as the deceased were involved in offences punishable with death or with imprisonment for life. It is also the claim of the police that in each of the encounters, they had the right of private defence as the members of the Naxalite groups (PWG) were the aggressors and unless the police had defended themselves, they would have been killed by the members of the unlawful association.

24. As has already been mentioned, one of the deceased persons was not at all connected with any criminal case. The evidence on record does not show, in each of other four cases, an attempt by the police to arrest the deceased persons and their offer of resistance. Sub-Section (3) of Section 46 of Cr. P.C. provides that the causing of death could be conditioned upon the involvement of the accused in an offence punishable with death or with imprisonment for life and offer of resistance when attempt is made to arrest him.

25. Article 21 of the Constitution of India provides that no person shall be deprived of his life except according to the procedure established by law. Article 6 of the International Covenant on Civil and Political Rights provides:

1. "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

"Right to life" is the most important one so far as any person is concerned because all other rights would be dependent upon the subsistence of life. The Constitution and the Covenant have, therefore, guaranteed life in emphatic terms and the only limitation is that it could be taken away by the procedure established by law. It is not necessary to support this conclusion by any authority and it appears to us as too elementary. What is next to be examined is, is there a procedure which authorises taking away of life in the facts of these cases.

26. Mr. Sitapati has clearly accepted the position that the practice obtaining in Andhra Pradesh is that when an encounter death takes place, an entry is made in the police station of the fact and FIR is drawn up showing the deceased as accused and closing the case as having abated on account of death of the accused person. No investigation is ordinarily undertaken. In many of these cases, the police has claimed the right of private defence and since the investigation is made very often by the officer at the police station who has himself led the alleged encounter, he utilises his own knowledge to close the matter.

27. This practice of showing the deceased person as accused and closing the case as abated is seriously challenged by Mr Kannibaran, as being contrary to legal procedure. We had enquired from learned Solicitor General as also from the Advocate General of Andhra Pradesh as to whether this was a tenable practice in law and whether this could stand the test of criminal jurisprudence. Both of them found it difficult to support this as a legal practice. Even conceding that the police stand is correct - that there had been a real encounter - the dead lot cannot be shown as the accused because in most of these cases they *prima facie* did not do anything which would justify their being arrayed as accused persons particularly in the process of killing subject, of course, to the acceptance of the plea of resistance to arrest. As we have already pointed out while dealing with the evidence, in none of these encounters did the police receive any injury, while in every case one or more persons from the other side died. The scheme of the criminal law prevailing in India is that a person who claims the right of private defence as a cover against prosecution has to plead and establish the same. Chapter IV of the Indian Penal Code deals with "General Exceptions" and makes no distinction between an ordinary person and a policeman in this regard excepting in the matter of the plea of performance of duty. In case a situation as contemplated in these Sections arises, police is certainly entitled to take to arms and even kill the attackers without suffering any punishment for the killing.

28. Right of private defence, if raised, has to be established. Criminal law contemplates that entitlement of protection under an exception would be available if the conditions are satisfied. It is difficult to apply the golden scale when the battle for life is on. The punishment prescribed is a lesser one than in normal situation. The right of private defence has to be raised and established at the trial and not during investigation. Section 105 of the Evidence Act clearly prescribes:

"When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code (45 of 1860) or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances."

29. Mr Sitapati for the police was very emphatic that the procedure which is being followed is just and proper and has the authority of being in vogue for over a century. He also emphasised before us in unequivocal terms that if it be otherwise, it would be difficult for the police to function in the areas where the normal law and order is not operating and groups of unlawful associations have taken the law into their own hands and have been disturbing peace. There may be force in his submission that taking a contrary view would be inconvenient to the police. What is for consideration is not inconvenience but the legality of the action within the frame of Article 21. We do not think there is scope for acceptance of the stand of Mr. Sitapati.

30. We would, however, like to mention about the human rights of the innocent citizens and the policemen who fall prey to the illegal activities of the PWG men. Human

rights are universal and every one is entitled to them. In course of arguments we had suggested and we repeat that the PWG should stop their extra-legal activities and show respect for the lives of others and bring themselves into the fold of law and conform to the conduct prescribed.

31. We are conscious of the position that the State of Andhra Pradesh is undergoing severe strain and turmoil on account of the illegal activities of the PWG. Apart from the attacks which police suffer now and then in the hands of the PWG people, the common man, both in urban and non-urban areas is badly affected. He runs the risk of his life; there is no protection to his property and peace and tranquility within the society are totally in the hands of groups of PWG. The hardship of the State, in our view, cannot take away or abridge the guarantee under Article 21 of the Constitution or Article 6 of the Covenant and while enforcing the guarantee and working in favour of its sustenance in full form, we cannot invoke the doctrine of necessity and apply it as a cover against the fundamental right.

32. The question for consideration is as to whether the procedure followed as above has the sanction of law. Section 154 Cr. P.C. provides that if information is given orally relating to the commission of a cognizable offence, the officer-in-charge of the Police Station shall reduce it into writing. Section 156 speaks of power of Police officers to investigate cognizable cases. Section 157 provides that if a cognizable offence is suspected from the information received or from other sources, the officer-in-charge of the Police Station shall forthwith send a report of the same to the Magistrate empowered to take cognizance of such offence and he shall proceed to take up investigation of the case. Section 173 requires the investigation to be completed expeditiously and as soon as it is completed to forward the investigation report to the concerned Magistrate. The investigation must be directed to find out if and what offence is committed and as to who are the offenders. If, upon completion of the investigation, it appears to the officer-in-charge of the Police Station that there is no sufficient evidence or reasonable ground, he may decide to release the suspected accused, if in custody, on his executing a bond. If, however, it appears to him that there is sufficient evidence or reasonable ground to place the accused on trial, he has to take necessary steps as provided in Section 170 of the Code. In either case, on completion of the investigation, he has to submit a report to the Magistrate. The report of investigation in such cases should be examined thoroughly by the Magistrate so that complete application of the judicial mind is available to ensure just investigation and upright conclusion. The Magistrate, on consideration of the report, may either accept the same or disagree with the conclusions and call for further investigation as provided in Section 173 (8) of the Code. If the Magistrate accepts the report, he can take cognizance of the offence under Section 190 of the Code.

33. Section 157 (1) requires the officer-in-charge of the police station to apply his mind to the information received and the surrounding circumstances to find out whether there is reason to suspect the commission of a cognizable offence which he is empowered under Section 156 to investigate. He cannot mechanically accept the information received.

When the information received indicates that death was caused in the encounter as a result of the firing by the Police, *prima facie* the ingredients of Section 299 IPC which defines culpable homicide, are satisfied. This is sufficient to suspect that an offence of culpable homicide has been committed. Thus, Section 157 of the Code is attracted calling for investigation. Any plea like causing of the death in the case does not constitute an offence either because it was done in exercise of the right of private defence or in exercise of the powers of arrest conferred by Section 46 of the Code, can be accepted only after investigating into the facts and circumstances. Section 100 of IPC provides that right of private defence of the body extends to the voluntary causing of death if occasion for exercise of the right falls in any one of the six categories enumerated in that Section. Whether the case falls under any one of the six categories, can only be ascertained by proper investigation. Similarly, when Section 46 (3) of the Code is invoked, it has to be ascertained as to whether the death of the deceased occurred when he forcibly resisted the endeavour of the Police to arrest him and whether the deceased was accused of an offence punishable with death or imprisonment for life. Without proper investigation, the police officer cannot say that the causing of the death in the encounter was not an offence either because it was done in exercise of the right of private defence or was done in legitimate exercise of the power conferred by Section 46 of the Code. One of the deceased persons in these cases, was not at all connected with any criminal case. Hence, Section 46 could not be invoked in that case. Section 174 of the Code says that when the police officer in charge of the Police station receives information that a person has been killed by another, he shall make an investigation about the apparent cause of death and submit a report to the District or Sub-Divisional Magistrate and also to take steps to arrange for the autopsy of the body. These provisions indicate that unnatural death has to be taken note of seriously by the Police and required them to find out by investigation the real cause of death. The responsibility is greater when it is the Police that are the cause of unnatural death. There is also a general feeling that most of the encounters are fake. It is, therefore, in public interest that the conduct of the Police involved is subjected to proper scrutiny by investigation. To avoid the possibility of bias, the investigation in such cases should be entrusted to an independent agency like the State CID by a general order of the Government. We are, therefore, of the opinion that when information is received in the police station about the causing of the death by the police officer in an encounter, the officer-in-charge of the Police station must, after recording that information, draw the inference that there is reason to suspect the commission of an offence and proceed to investigate the same as required by Section 157 of the Code. If such a procedure is not required to be followed, it would give licence to the Police to kill with impunity any citizen in the name of an encounter by just stating that he acted in 'the right of private defence' or under Section 46 of the Code. A procedure which brings about such unjust, unfair and unreasonable consequences cannot be countenanced as being within Article 21 of the Constitution.

34. The stand of the Police in these cases is that in the course of the encounters that took place, several persons alleged to be from the PWG, died as a result of the firing by the police without even a simple injury being suffered by the police. On the basis of the

information furnished by the leader of the Police party that was engaged in the encounter, entries were made in the respective police stations stating that the deceased persons made an attempt to kill the Police and were, therefore, guilty of the offence of attempt to murder under Section 307 IPC. On that basis, they were described as accused and FIRs were drawn up by the Police. The cases were closed without investigation on the ground that they have abated on account of the death of the accused persons. No attempt whatsoever was made to ascertain as to the police officers responsible for the respective killings and as to whether any offences were committed by any of them punishable in law. The stand of the Police before us is that they have not committed any offence as they acted in exercise of the right of private defence. In some of the cases, the killing is sought to be justified by invoking Section 46(3) of the Cr. P.C. It is on this assumption that information was recorded in the police station. The information recorded in the police station in many of these cases is as furnished by the very police officer who led the alleged encounter. Attention was confined to the conduct of the deceased and not to that of the Police who had caused the deaths when the information was received at the police station. Causing of death by the Police firing in the alleged encounter has been assumed to be justified either in exercise of the right of private defence, or in course of exercise of power of arrest under Section 46. No attempt was made to investigate the circumstances under which the police opened fire, causing death to several persons. The procedure followed in this case is not sanctioned by law. It is even opposed to the procedure prescribed by the Code. The procedure is unjust, unfair and unreasonable and, therefore, violative of the fundamental right guaranteed by Article 21 of the Constitution.

35. For the reasons stated above, we make the following recommendations:

i) As the information furnished to the police officers in charge of the respective Police stations in each of these cases is sufficient to suspect the commission of a cognizable offence, immediate steps be taken to investigate the facts and circumstances leading to the death of the PWGs, in the light of the elucidation made in this order.

ii) As the Police themselves in the respective cases are involved in perpetrating encounter, it would be appropriate that the cases are made over to some other investigating agency - preferably the State CID. As a lot of time has already been lost, we recommend that the investigation be completed within four months from now. If the investigation results in prosecution, steps for speedy trial be taken. We hope compensation would be awarded in cases ending in conviction and sentence.

iii) Deceased Shankariah (Case No. 234 (3)/93-94/NHRC) admittedly was not involved in any pending criminal case and ending his life through the process of alleged encounter was totally unjustified. So far as he is concerned, we are of the view-learned Advocate General conceded that our view was right- that the State Government should immediately come forward to compensate

his widow by payment of compensation of Rs. 1 lakh as done in similar cases and the police involved in killing him should be subjected to investigation and trial depending upon the result of investigation.

iv) We commend to the State Police to change their practice and sensitise everyone in the State to keep the legal position in view and modulate action accordingly. In case the practice continues notwithstanding what we have now said, the quantum of compensation has to be increased in future and stricter view of the situation has to be taken. Being aware of the fact that this practice has been in vogue for years and the people have remained oblivious of the situation, we are not contemplating the award of any interim compensation at this stage.

36. Our recommendation be forwarded to the State Government without delay for acceptance and 30 days' time is given for intimation of response.

37. We are thankful to learned Solicitor General for responding to our request to assist the Commission. We place on record our appreciation for the assistance given by counsel for the parties.

Sd/-
(Ranganath Misra)
Chairperson

Sd/-
(M. Fathima Beevi)
Member

Sd/-
(V.S. Malimath)
Member

November 5, 1996

Letter to Chief Ministers/Administrators of all States/Union Territories regarding the modified procedure to be followed in cases of deaths in police encounters

Dr. Justice A.S. Anand
Chairperson
(Former Chief Justice of India)

राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

2nd December, 2003

Dear

Death during the course of a police action is always a cause of concern to a civil society. It attracts criticism from all quarters like Media, the general public and the NGO sector.

The police does not have a right to take away the life of a person. If, by his act, the policeman kills a person, he commits an offence of culpable homicide not amounting to murder, unless it is established that such killing was not an offence under the law. Under the scheme of criminal law prevailing in India, it would not be an offence if the death is caused in exercise of right of private defence. Another provision under which the police officer can justify causing the death of a person, is Section 46 of the Criminal Procedure Code. This provision authorizes the police to use reasonable force, even extending up to the causing of death, if found necessary to arrest the person accused of an offence punishable with death or imprisonment for life. Thus, it is evident that death caused in an encounter if not justified would amount to an offence of culpable homicide.

The Commission while dealing with complaint numbers 234 (1 to 6)/93-94 and taking note of grave human rights issue involved in alleged encounter deaths, decided to recommend procedure to be followed in the cases of encounter death to all the States. Accordingly, Hon'ble Justice Shri M.N. Venkatachaliah, the then Chairperson NHRC, wrote letter dated 29/3/1997 to all the Chief Ministers recommending the procedure to be followed by the states in "cases of encounter deaths" *(copy enclosed for ready reference*).*

Experience of the Commission in the past six years in the matters of encounter deaths has not been encouraging. The Commission finds that most of the States are not following the guidelines issued by it in the true spirit. It is of the opinion that in order to bring in transparency and accountability of public servants, the existing guidelines require some modifications.

Though under the existing guidelines, it is implicit that the States must send intimation to the Commission of all cases of deaths arising out of police encounters, yet some

* For copy of the letter refer to page nos. 31 to 33.

States do not send intimation on the pretext that there is no such specific direction. As a result, authentic statistics of deaths occurring in various States as a result of police action are not readily available in the Commission. The Commission is of the view that these statistics are necessary for effective protection of human rights in exercise of the discharge of its duties.

On a careful consideration of the whole matter, the Commission recommends following modified procedure to be followed by the State Governments in all cases of deaths in the course of police action:-

A. When the police officer in charge of a police station receives information about the deaths in an encounter between the Police party and others, he shall enter that information in the appropriate register.

B. Where the police officers belonging to the same police station are members of the encounter party, whose action resulted in deaths, it is desirable that such cases are made over for investigation to some other independent investigating agency, such as State CBCID.

C. Whenever a specific complaint is made against the police alleging commission of a criminal act on their part, which makes out a cognizable case of culpable homicide, an FIR to this effect must be registered under appropriate sections of the I.P.C. Such case shall invariably be investigated by State CBCID.

D. A Magisterial Inquiry must invariably be held in all cases of death which occur in the course of police action. The next of kin of the deceased must invariably be associated in such inquiry.

E. Prompt prosecution and disciplinary action must be initiated against all delinquent officers found guilty in the magisterial enquiry/police investigation.

F. Question of granting of compensation to the dependents of the deceased would depend upon the facts and circumstances of each case.

G. No out-of-turn promotion or instant gallantry rewards shall be bestowed on the concerned officers soon after the occurrence. It must be ensured at all costs that such rewards are given/recommended only when the gallantry of the concerned officer is established beyond doubt.

H. A six monthly statement of all cases of deaths in police action in the State shall be sent by the Director General of Police to the Commission, so as to reach its office

by the 15th day of January and July respectively. The statement may be sent in the following format along with post-mortem reports and inquest reports, wherever available and also the inquiry reports:

1. Date and place of occurrence :

2. Police Station, district :

3. Circumstances leading to deaths :

   i. Self defence in encounter
   ii. In the course of dispersal of unlawful assembly
   iii. In the course of effecting arrest

4. Brief facts of the incident :

5. Criminal Case No. :

6. Investigating Agency :

7. Findings of the magisterial Inquiry/Enquiry by senior officers :

   a. disclosing in particular names and designations of police officials, if found responsible for the death; and
   b. whether use of force was justified and action taken was lawful.

It is requested that the concerned authorities of the State are given appropriate instructions in this regard so that these guidelines are adhered to both in letter and in spirit.

With regards,

Yours sincerely,

(A.S. Anand)

To

Chief Ministers/Administrators of all States/Union Territories.

III. On Visits to Police Lock-ups & Guidelines on Arrests and Polygraph Tests

Visit of NHRC's Officers to Police Lock-ups

Letter to Chief Secretaries/Administrators of all States/Union Territories on the visit of NHRC's Officers to police lock-ups

R.V. Pillai
Secretary General

राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission
Sardar Patel Bhavan, Sansad Marg,
New Delhi-110001

DO No. 15(13)/97-Coord

1 August, 1997

Dear

Officers of the National Human Rights Commission visit various States in pursuance of the directions issued by the Commission on a variety of items of work which come within its statutory responsibilities.

2. In the context of reports received by the Commission on the condition of police lock-ups in various States, the Commission has decided that the State Governments may be requested to permit officers of the NHRC to visit the police lock-ups also during their visits to States.

3. Accordingly, I am to request you to issue necessary instructions to enable officers of the NHRC visiting your State to undertake visits to police lock-ups as well.

4. A line in confirmation of the instructions issued will be greatly appreciated.

With regards,

Yours sincerely,

Sd/-

(R.V. Pillai)

To

All Chief Secretaries / Administrators of States & UTs.

Guidelines on Arrests

Letter to Chief Secretaries/Administrators of all States/Union Territories to adopt and translate NHRC guidelines on "arrests" and make them available to all police stations and police officers

D.R. Karthikeyan
Director General

No. 7/11/99-PRP&P
राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

22nd November, 1999

To
The Chief Secretaries of all States/Union Territories

Sir,

After due consideration of all the aspects involved, the National Human Rights Commission has adopted certain guidelines regarding "arrests".

A note containing these guidelines approved by the Commission is enclosed herewith. The Commission requests all the State Governments to translate these guidelines into their respective regional language and make them available to all Police Officers and in all Police Stations.

Senior officers visiting Police Stations may ensure the availability of such guidelines with respective police officers and the Police Stations and ensure their compliance.

Yours faithfully,

Sd/-

(D.R. Karthikeyan)

Copy to:

1. Home Secretaries of all States/Union Territories
2. Directors General of Police of all States

Encl: As stated

NHRC GUIDELINES REGARDING ARREST

Need for Guidelines

Arrest involves restriction of liberty of a person arrested and therefore, infringes the basic human rights of liberty. Nevertheless the Constitution of India as well as international human rights law recognise the power of the State to arrest any person as a part of its primary role of maintaining law and order. The Constitution requires a just, fair and reasonable procedure established by law under which alone such deprivation of liberty is permissible.

Although Article 22(1) of the Constitution provides that every person placed under arrest shall be informed, as soon as may be, the ground of arrest and shall not be denied the right to consult and be defended by a lawyer of his choice and Section 50 of the Code of Criminal Procedure, 1973 (Cr. PC) requires a police officer arresting any person to "forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest". In actual practice these requirements are observed more in the breach.

Likewise, the requirement of production of the arrested person before the court promptly which is mandated both under the Constitution [Article 22 (2) and the Cr. PC (Section 57)] is also not adhered to strictly.

A large number of complaints pertaining to Human Rights violations are in the area of abuse of police powers, particularly those of arrest and detention. It has, therefore, become necessary, with a view to narrowing the gap between law and practice, to prescribe guidelines regarding arrest even while at the same time not unduly curtailing the power of the police to effectively maintain and enforce law and order and proper investigation.

PRE-ARREST

- The power to arrest without a warrant should be exercised only after a reasonable satisfaction is reached, after some investigation, as to the genuineness and bonafides of a complaint and a reasonable belief as to both the person's complicity as well as the need to effect arrest. [Joginder Kumar's case - (1994) 4 SCC 260)].

- Arrest cannot be justified merely on the existence of power, as a matter of law, to arrest without a warrant in a cognizable case.

- After Joginder Kumar's pronouncement of the Supreme Court the question whether the power of arrest has been exercised reasonably or not is clearly a justiciable one.

- Arrest in cognizable cases may be considered justified in one or other of the following circumstances:

  (i) The case involves a grave offence like murder, dacoity, robbery, rape, etc. and it is necessary to arrest the suspect to prevent him from escaping or evading the process of law.

  (ii) The suspect is given to violent behaviour and is likely to commit further offences.

  (iii) The suspect requires to be prevented from destroying evidence or interfering with witnesses or warning other suspects who have not yet been arrested.

  (iv) The suspect is a habitual offender who, unless arrested, is likely to commit similar or further offences. [3rd Report of National Police Commission]

- Except in heinous offences, as mentioned above, an arrest must be avoided if a police officer issues notice to the person to attend the police station and not leave the station without permission [see Joginder Kumar's case (1994) SCC 260].

- The power to arrest must be avoided where the offences are bailable unless there is a strong apprehension of the suspect absconding.

- Police officers carrying out an arrest or interrogation should bear clear identification and name tags with designations. The particulars of police personnel carrying out the arrest or interrogation should be recorded contemporaneously, in a register kept at the police station.

ARREST

- As a rule use of force should be avoided while effecting arrest. However, in case of forcible resistance to arrest, minimum force to overcome such resistance may be used. However, care must be taken to ensure that injuries to the person being arrested, visible or otherwise, is avoided.

- The dignity of the person being arrested should be protected. Public display or parading of the person arrested should not be permitted at any cost.

- Searches of the person arrested must be done with due respect to the dignity of the person, without force or aggression and with care for the person's right to privacy. Searches of women should only be made by other women with strict regard to decency. [Section 51(2) Cr. PC].

- The use of handcuffs or leg chains should be avoided and if at all, it should be resorted to strictly in accordance with the law repeatedly explained and mandated in judgement of the Supreme Court in Prem Shanker Shukla vs. Delhi Administration [(1980) 3 SCC 526] and Citizen for Democracy vs. State of Assam [(1995) 3 SCC 743].

- As far as is practicable, women police officers should be associated where the person or persons being arrested are women. The arrest of women between sunset and sunrise should be avoided.

- Where children or juveniles are sought to be arrested, no force or beatings should be administered under any circumstances. Police Officers, may for this purpose, associate respectable citizens so that the children or juveniles are not terrorised and minimal coercion is used.

- Where the arrest is without a warrant, the person arrested has to be immediately informed of the grounds of arrest in a language which he or she understands. Again, for this purpose, the police, if necessary may take the help of respectable citizens. These grounds must have already been recorded in writing in police records. The person arrested should be shown the written reasons as well and also given a copy on demand. [Section 50(1) Cr. PC.]

- The arrested person can, on a request made by him or her, demand that a friend, relative or other person known to him be informed of the fact of his arrest and the place of his detention. The police should record in a register the name of the person so informed. [Joginder Kumar's case (supra)].

- If a person is arrested for a bailable offence, the police officer should inform him of his entilement to be released on bail so that he may arrange for sureties. [Section 50 (2) Cr. PC.]

- Apart from informing the person arrested of the above rights, the police should also inform him of his right to consult and be defended by a lawyer of his choice. He should also be informed that he is entitled to free legal aid at state expense [D.K. Basu's case (1997) 1 SCC].

- When the person arrested is brought to the police station, he should, if he makes a request in this regard, be given prompt medical assistance. He must be informed of this right. Where the police officer finds that the arrested person is in a condition where he is unable to make such request but is in need of medical help, he should promptly arrange for the same. This must also be recorded contemporaneously in a register. The female requesting for medical help should be examined only by a female registered medical practitioner. [Section 53 Cr. PC].

- Information regarding the arrest and the place of detention should be communicated by the police officer effecting the arrest without any delay to the Police Control Room and District / State Headquarters. There must be a monitoring mechanism working round the clock.

- As soon as the person is arrested, police officer effecting the arrest shall make a mention of the existence or non-existence of any injury(s) on the person of the arrestee in the register of arrest. If any injuries are found on the person of the arrestee, full description and other particulars as to the manner in which the injuries were caused should be mentioned in the register, which entry shall also be signed by the police officer and the arrestee. At the time of release of the arrestee, a certificate to the above effect under the signature of the police officer shall be issued to the arrestee.

- If the arrestee has been remanded to police custody under the orders of the court, the arrestee should be subjected to medical examination by a trained Medical Officer every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. At the time of his release from the police custody, the arrestee shall be got medically examined and a certificate shall be issued to him stating therein the factual position of the existence or non-existence of any injuries on his person.

POST-ARREST

- The person under arrest must be produced before the appropriate court within 24 hours of the arrest [Sections 56 and 57 Cr. PC.]

- The person arrested should be permitted to meet his lawyer at any time during the interrogation.

- The interrogation should be conducted in a clearly identifiable place, which has been notified for this purpose by the Government. The place must be accessible and the relatives or friend of the person arrested must be informed of the place of interrogation.

- The methods of interrogation must be consistent with the recognised rights to life, dignity and liberty and right against torture and degrading treatment.

ENFORCEMENT OF GUIDELINES

1. The guidelines must be translated in as many languages as possible and distributed to every police station. It must also be incorporated in a handbook which should be given to every policeman.

2. Guidelines must receive maximum publicity in the print or other electronic media. It should also be prominently displayed on notice board, in more than one language, in every police station.

3. The police must set up a complaint redressal mechanism, which will promptly investigate complaints of violation of guidelines and take corrective action.

4. The notice board which displays guidelines must also indicate the location of the complaints redressal mechanism and how that body can be approached.

5. NGOs and public institutions including courts, hospitals, universities, etc., must be involved in the dissemination of these guidelines to ensure the widest possible reach.

6. The functioning of the complaint redressal mechanism must be transparent and its reports accessible.

7. Prompt action must be taken against errant police officers for violation of the guidelines. This should not be limited to departmental enquiries but also set in motion the criminal justice mechanism.

8. Sensitisation and training of police officers is essential for effective implementation of the guidelines.

• • •

Letter to Chief Secretaries of all States on arrests of farmers to recover arrears of land revenue

N. Gopalaswami, IAS
Secretary General

राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

November 21, 2000

Dear

I am sending herewith the Commission's Proceedings in two cases decided by the Commission recently, which were concerned with the arrest and detention in jail of farmers in the payment of land revenue. As has been brought out clearly in the decision it seems that many revenue authorities are not aware of the fact that the Supreme Court in a case decided in 1980 has held that such arrests and detention are flagrantly violative of Article 21 unless there was proof of wilful failure to pay on the part of the farmers. The proceedings of the Commission in two cases reported from Uttar Pradesh are attached herewith for information. It is requested that this may be brought to the notice of all revenue authorities in your State.

Yours sincerely,

Sd/-

(N. Gopalaswami)

To
All Chief Secretaries

NATIONAL HUMAN RIGHTS COMMISSION
SARDAR PATEL BHAVAN
SANSAD MARG, NEW DELHI

Name of the complainant : Shri Sharda Belvi

Case No. : 19265/96-97 (24/7786/96-LD)

Date : 21 August, 2000

Coram : Justice Shri J.S. Verma, Chairperson

PROCEEDINGS

The Commission became seized of this case on receipt of a complaint from a certain Shri Sharda Belvi, Convenor, Rashtriya Sanyojak Sangha Samity, District Jalaun thereby forwarding copy of a Hindi weekly 'Vichar Soochak' containing a press report under the caption "Bemousmi Raag Vasooli Ka", alleging the arrest and detention of several farmers in the make shift jails purportedly with a view to effect recovery of the arrears of land revenue from them. It was also alleged that the detained farmers were not being properly fed and they were given diet @ 50 paisa per person per day.

The Commission issued notice to the District Magistrate, Jalaun and called for a report in the matter. The District Magistrate, it appears got the matter inquired into, through the Sub-Divisional District Magistrate, Kalpi and based on the same has reported that in the month of March, 1997, the District Administration had taken up a special drive for recovery of the land revenue from the defaulter farmers. In order to effect the recovery, the defaulter farmers must have been arrested pursuant to warrants of arrest issued against them after following the due procedure of law and they were detained in the civil lock-up of the Tehsil. The family members/relatives of the detained farmers were making arrangement for their food, etc. and those farmers who did not get such a facility were provided food, etc. by the State Administration. The District Magistrate, however, denied any incident of burning of crops by the farmers due to scarcity of water/irrigation facilities.

The Commission has given its anxious consideration to the facts and circumstances of the case which reveal insensitivity of the concerned authorities as well as their utter ignorance of the law laid down by the Supreme Court long back for such situations. The decision of the Supreme Court in Jolly George Varghese vs. The Bank of Cochin, AIR 1980 S.C. 470, lays down the law for dealing with defaulters who fail to repay the loan and their liability of imprisonment as a mode to enforce the contractual liability. After

construing the provisions in Section 51 and Order 21 Rule 37, Civil Procedure Code in the context of Article 11 of the ICCPR, it was held by Justice Krishna Iyer:

> "To recover debts by the procedure of putting one in prison is too flagrantly violative of Article 21 unless there is proof of the minimal fairness of his wilful failure to pay in spite of his sufficient means and absence of more terribly pressing claims on his means such as medical bills to treat cancer or other grave illness....."
>
> That judgement proceeds further to say as under:
>
> "The simple default to discharge is not enough. There must be some element of bad faith beyond mere indifference to pay, some deliberate or recusant disposition in the past, or alternatively, current means to pay the decree or a substantial part of it. The provision emphasizes the need to establish not mere ommission to pay but an attitude of refusal on demand verging, on dishonest disowning of the obligation under the decree. Here considerations of the debtor's other pressing needs and strained circumstances will play prominently."
>
> (emphasis supplied)

It is, therefore, clear that unless the conclusion is reached after a fair inquiry that the default in the discharge of the contractual liability to repay the loan has some element of bad faith verging on disowning of the obligation, mere default to repay is not enough to detain the defaulter. In the present case no attempt was made to address the real issue and reach such a satisfaction. No such inquiry was held by the Tehsildar or any other authority. The jurisdictional fact of the default resulting from omission verging on dishonest disowning of the obligation was absent without which the power to detain could not be invoked.

For the above reasons, the Commission is of the view that the detention of several farmers for a period of about a fortnight and that too without providing them adequate and proper food was unjustified. The State was under an obligation to make arrangement for their proper feeding during the period of their detention and the authorities could not abdicate this obligation merely on the ground that relatives/friends of some of the detenues were making arrangement for their food. The diet money @ 50 paisa per person must have been fixed several decades back and cannot be said sufficient to meet the cost of even one square meal what to talk of two square meals a day.

The Commission accordingly makes the following recommendations to the State Government of UP through its Chief Secretary:

(i) to pay Rs. 10,000/- by way of 'immediate interim relief' to each of the persons detained in the Tehsil make shift jail during the period of March, 1997;

(ii) to frame guidelines in consonance with the aforesaid Supreme Court judgement for the use of the concerned authorities charged with the responsibility of making recoveries of land revenue, etc.;

(iii) to revise the existing norms of diet money for the civil prisoners in the State if the same are inadequate to meet the cost of diet of the inmate.

The compliance report shall be had within six weeks.

Sd/-

(Justice J.S. Verma)
Chairperson

NATIONAL HUMAN RIGHTS COMMISSION
SARDAR PATEL BHAVAN
SANSAD MARG, NEW DELHI

Name of the complainant : Shri Sharda Belvi

Case No. : 6299/24/98-99/ACD

Date : 12 July, 2000

Coram : Justice Shri J.S. Verma, Chairperson

PROCEEDINGS

This case was registered on the complaint of a social activist, Shri Sharda Belvi who annexed to the complaint a news item published in the Hindi Daily 'Amar Ujala' of 3 June, 1998. According to the news report one Parmai, aged 75 years, r/o village Taharpura, Police Station Konch in District Orai (Jalaun) in Uttar Pradesh died in custody of starvation and thirst being detained as a defaulter of land revenue amounting to Rs. 4,000/- only. He is alleged to have been arrested by the Tehsildar, Virendra Gupta and other employees of the Tehsil on 23 May, 1998 and kept in the lock-up of the Tehsil where he died of thirst for want of drinking water on 1/2 June, 1998. The post-mortem did not reveal any external or internal injuries. No specific cause of death has been indicated.

In response to the notice issued by the Commission, the District Magistrate, Jalaun admitted the arrest of deceased Parmai on 23 May 1998 for default in payment of a loan of the Land Development Bank which was to be recovered as land revenue by detaining him in the Tehsil lock-up. It is admitted that the arrest and detention in Tehsil lock-up was only because of the default in payment of the bank loan which was recoverable as land revenue. The District Magistrate denied the lack of drinking water facility in the lock-up but added that provision for the food of the defaulters kept in the lock-up is to be made by the family members of the defaulter and in case the family members do not provide food, the same is arranged by the Land Development Bank at a cost of 50 paise per meal to be added to the amount due from the defaulter. The allegation that the lock-up measuring 8' x 16' had housed 11 other such defaulters has not been denied. It has been stated that the family of the deceased has been paid Rs. 5,000/- as compensation. There is denial of the violation of human rights in any manner.

The Director General (Investigation) was required to investigate and report. The report of the ADIG has been endorsed by the DG (I) recommending award of Rs. 1 lakh

by way of compensation as "immediate interim relief" and the conditions in which the loan defaulters are kept in custody has been depreciated.

The facts of this case are startling and reveal insensitivity of all the authorities concerned as well as their utter ignorance of the law laid down by the Supreme Court long back for such situations. The decision of the Supreme Court in Jolly George Varghese vs. The Bank of Cochin, AIR 1980 S.C. 470, lays down the law for dealing with defaulters who fail to repay the loan and their liability for imprisonment as a mode to enforce the contractual liability. After construing the provisions in Section 51 and Order 21 Rule 37, Civil Procedure Code in the context of Article 11 of the ICCPR it was held by Justice Krishna Iyer that:

> "To recover debts by the procedure of putting one in prison is too flagrantly violative of Article 21 unless there is proof of the minimal fairness of his wilful failure to pay in spite of his sufficient means and absence of more terribly pressing claims on his means such as medical bills to treat cancer or other grave illness ....."
>
> That judgement proceeds further to say as under:
>
> "The simple default to discharge is not enough. There must be some element of bad faith beyond mere indifference to pay, some deliberate or recusant disposition in the past, or alternatively, current means to pay the decree or a substantial part of it. The provision emphasizes the need to establish not mere omission to pay but an attitude of refusal on demand verging on dishonest disowning of the obligation under the decree. Here considerations of the debtor's other pressing needs and strained circumstances will play prominently."
>
> (emphasis supplied)

It is, therefore, clear that unless the conclusion is reached after a fair inquiry that the default in the discharge of the contractual liability to repay the loan has some element of bad faith verging on disowning of the obligation, mere default to repay is not enough to detain the defaulter. In the present case no attempt was made to address the real issue and reach such a satisfaction. No such inquiry was held by the Tehsildar or any other authority. The jurisdictional fact of the default resulting from omission verging on dishonest disowning of the obligation was absent without which the power to detain could not be invoked. For this reason alone the detention of Parmai (the deceased) was illegal and his tragic death during the detention makes it worse for the detaining authority.

The liability of the State of Uttar Pradesh for the act of the Tehsildar and other officials purporting to act in their official capacity for recovery of a bank loan as arrears

of land revenue cannot be disputed on the admitted facts alone. The payment of a mere Rs. 5,000/- on the death of Parmai to his family members was a mere pittance and does not absolve the State Government from making adequate recompense to the next of kin of the deceased. The Commission, therefore, directs payment of Rs. 1 lakh as "immediate interim relief" to the next of kin of deceased Parmai by the Government of Uttar Pradesh within four weeks. The Commission also recommends to the State Government that all the Revenue Officers in the State be apprised of the above Supreme Court decision laying down the law on the point requiring strict compliance thereof in all such cases. Compliance report be submitted in six weeks.

The case is closed with the above direction.

Sd/-

(Justice J.S. Verma)
Chairperson

Guidelines on Polygraph Tests

Letter to Chief Secretaries/Administrators of all States/Union Territories on guidelines relating to administration of polygraph test (Lie Detector Test)

No. 117/8/97-98
National Human Rights Commission
(Law Division-III)

S.K. Srivastava
Assistant Registrar (Law)

Sardar Patel Bhavan,
Sansad Marg,
New Delhi-110 001

11 January, 2000

To

Chief Secretaries of States / Union Territories

Sub : Guidelines Relating to Administration of Polygraph Test (Lie Detector Test).

Sir,

I am directed to state that the Commission in its proceeding on 12.11.1999 has considered the Guidelines relating to Administration of Polygraph Test (Lie Detector Test) on an accused and directed that:

"The Commission adopted the Guidelines and decided that it should be circulated to all concerned authorities for being followed scrupulously."

Accordingly, a copy of the above Guidelines is forwarded herewith.

You are, therefore, requested to follow the said guidelines and acknowledge the same.

Yours faithfully,

Sd/-

Assistant Registrar (Law)

Encl: As above.

GUIDELINES RELATING TO ADMINISTRATION OF POLYGRAPH TEST (LIE DETECTOR TEST) ON AN ACCUSED

The Commission has received complaints pertaining to the conduct of Polygraph Test (Lie Detector Test) said to be administered under coercion and without informed consent. The tests were conducted after the accused was allegedly administered a certain drug. As the existing police practice in invoking Lie Detector Test is not regulated by any 'Law' or subjected to any guidelines, it could tend to become an instrument to compel the accused to be a witness against himself violating the constitutional immunity from testimonial compulsion.

These matters concerning invasion of privacy have received anxious consideration from the Courts (see Gomathi vs. Vijayaraghavan (1995) Cr. L.J. 81 (Mad.); Tushaar Roy vs. Sukla Roy (1993) Cr. L.J. 1959 (Cal.); Sadashiv vs. Nandini (1995) Cr. L.J. 4090). A suggestion for legislative intervention was also made, in so far as matrimonial disputes were concerned. American Courts have taken the view that such tests are routinely a part of everyday life and upheld their consistence with due process (See Breithbaupht vs. Abram (1957) 352 US 432). To hold that because the privilege against testimonial compulsion "protects only against extracting from the person's own lips" (See Blackford vs. US (1958) 247 F (20) 745), the life and liberty provisions are not attracted may not be wholly satisfactory. In India's context the immunity from invasiveness (as aspect of Art. 21) and from self-incrimination (Art. 20 (3)) must be read together. The general executive power cannot intrude on either constitutional rights and liberty or, for that matter any rights of a person (See Ram Jawayya Kapur (1955) 2 SCR 225). In the absence of a specific 'law', any intrusion into fundamental rights must be struck down as constitutionally invidious (See Ram Jawayya Kapur (1955) 2 SCR 225; Kharak Singh (1964) 1 SCR 332 at pp. 350; Bennett Coleman (1972) 2 SCR 288 at pp. 26-27; Thakur Bharat Singh (1967) 2 SCR 454 at pp. 459-62; Bishamber Dayal (1982) 1 SCC 39 at pp. 20-27; Naraindass (1974) 3 SCR at pp. 636-8; Satwant (1967) 3 SCR 525). The Lie Detector Test is much too invasive to admit of the argument that the authority for Lie Detector Tests comes from the general power to interrogate and answer questions or make statements (Sections 160-167 Cr. P.C.). However, in India we must proceed on the assumption of constitutional invasiveness and evidentiary impermissiveness to take the view that such holding of tests is a prerogative of the individual not an empowerment of the police. In as much as this invasive test is not authorised by law, it must perforce be regarded as illegal and unconstitutional unless it is voluntarily undertaken under non-coercive circumstances. If the police action of conducting a Lie Detector Test is not authorised by law and impermissible, the only basis on which it could be justified is, it is volunteered. There is a distinction between: (a) volunteering, and (b) being asked to volunteer. This distinction is of some significance in the light of the statutory and constitutional protections available to any person. There is a vast difference between a person saying, "I wish to take a Lie Detector Test because I wish to clear my name", and a person is told by the police, "If

you want to clear your name, take a Lie Detector Test". A still worse situation would be where the police say, "Take a Lie Detector Test, and we will let you go". In the first example, the person voluntarily wants to take the test. It would still have to be examined whether such volunteering was under coercive circumstances or not. In the second and third examples, the police implicitly (in the second example) and explicitly (in the third example) link up the taking of the Lie Detector Test to allowing the accused to go free.

The extent and nature of the 'self-incrimination' is wide enough to cover the kinds of statements that were sought to be induced. In M.P. Sharma AIR 1954 SC 300, the Supreme Court included within the protection of the self-incrimination rule all positive volitional acts which furnish evidence. This by itself would have made all or any interrogation impossible. The test—as stated in Kathi Kalu Oghad (AIR 1961 SC 1808)—retains the requirement of personal volition and states that 'self-incrimination' must mean conveying information based upon the personal knowledge of the person giving information. By either test, the information sought to be elicited in a Lie Detector Test is information in the personal knowledge of the accused.

The Commission, after bestowing its careful consideration on this matter of great importance, lays down the following guidelines relating to the administration of Lie Detector Tests:

(i) No Lie Detector Tests should be administered except on the basis of consent of the accused. An option should be given to the accused whether he wishes to avail such test.

(ii) If the accused volunteers for a Lie Detector Test, he should be given access to a lawyer and the physical, emotional and legal implication of such a test should be explained to him by the police and his lawyer.

(iii) The consent should be recorded before a Judicial Magistrate.

(iv) During the hearing before the Magistrate, the person alleged to have agreed should be duly represented by a lawyer.

(v) At the hearing, the person in question should also be told in clear terms that the statement that is made shall not be a 'confessional' statement to the Magistrate but will have the status of a statement made to the police.

(vi) The Magistrate shall consider all factors relating to the detention including the length of detention and the nature of the interrogation.

(vii) The actual recording of the Lie Detector Test shall be done in an independent agency (such as a hospital) and conducted in the presence of a lawyer.

(viii) A full medical and factual narration of manner of the information received must be taken on record.

IV. Measures to Improve Police-Public Relationship

Guildelines for Setting-up Human Rights Cells

Circular on role and duties of Human Rights Cells in the States/City Police Headquarters

D.R. Karthikeyan
Director General (Inv.)

राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

2nd August, 1999

CIRCULAR ON ROLE AND DUTIES OF HUMAN RIGHTS CELLS IN THE STATES/CITY POLICE HEADQUARTERS.

Letters were addressed to all the Directors General of Police, Police Commissioners and Addl. Directors General of Police/Inspectors General of Police (Human Rights), on June 1, 1999 inviting their suggestions as to the role and duties that the Human Rights Cells of the State PHQs would undertake and perform. Based on the response received and interaction with the officers, the following guidelines are circulated for effective functioning of Human Rights Cells in the various Police Hqrs:

1) The Human Rights Cell will act as the main link between the NHRC and the State Police agencies.

2) All important cases/complaints referred by the Commission to the State Human Rights Cell wherever specifically indicated, would be got enquired into by an officer of appropriate level. Thereafter, the recommendations made by the Commission are to be followed up to ensure appropriate action against the delinquent officials and remedial measures taken, wherever required. However, in cases where the Human Rights Cell feels that an impartial enquiry may not be possible due to extraneous considerations, then it may recommend investigation by the State CID or even the CBI.

3) To keep a close watch on the alleged violations of human rights by police personnel which come to light through the newspapers, publications/other sources including complaints to different functionaries.

4) All enquiries/cases relating to police atrocities/harassment/abuse of authority, being sent by the Commission to the District Supdt. of Police for ascertaining facts and verification, may be monitored by the Cell. A copy of all such references will be sent to the Cell, to enable them to monitor timely response from the Superintendents of Police. They will also ensure follow up action wherever specific directions have been passed by the Commission by way of compliance.

5) Human Rights Cell to regularly interact with the District Superintendents of Police on human rights petitions/complaints and issue instructions/guidelines, so as to minimise and prevent violations of human rights by the police.

6) To conduct surprise visits to Police Stations, to check cases of illegal detention and abuse of authority.

7) To take such other steps as may be necessary for preventing violations and protecting and respecting the human rights of the citizenry who come in contact with the police functionaries.

8) To ensure that all Police Stations in the State display the guidelines given by the Supreme Court in WP No. 539 of 1986, in the case of D.K. Basu vs. State of West Bengal. These requirements are in addition to the constitutional and statutory safeguards and directions given by the courts from time to time in connection with the safeguarding of the rights and dignity of the arrestee vis-à-vis the duties of the police. Special care has to be taken to see that women, children and the vulnerable sections of the society are not harassed by the police by calling them to the police station in avoidable circumstances.

9) To coordinate with State Police Academy & Training Centres to ensure that their in-service training curriculum have sufficient elements of human right jurisprudence for the trainees of all ranks. Such a module would aim at educating and sensitizing on the following matters:

   (a) Constitutional provisions relating to rights of citizens.

   (b) Key provisions in the substantive law that provide explicit "do's" and "don'ts" in matters of arrest, interrogation, search and seizure, etc.

   (c) Landmark judgements of the Supreme Court on human rights matters; and

   (d) The implications of fall-outs and non-observance of the human rights guidelines/ instructions/laws, while discharging their duties and responsibilities.

10) Organise inter-active sessions/capsule courses of appropriate duration in all training institutions where prominent personalities, lawyers, NGOs are called for participation.

11) Compilation of the departmental circulars and directions on the human rights mandate, issued by the PHQ from time to time and see that these are re-circulated for recapitulation.

12) To identify specific areas of societal human rights violations in the State and to plan out preventive and rehabilitative schemes in conjunction with the concerned Departments (for instance in the field of Child Rights–child sexual abuse, child labour, gender justice, juvenile justice, non-criminal mentally ill lodged

in prisons, discrimination towards the under-privileged, Backward/SC/ST in specific areas, etc.)

13) To organise one day seminars/workshops on human rights in different cities in association with the State Human Rights Commissions (wherever they are constituted), local University or colleges, philanthrophic organisations like Rotary/ Lion Clubs.

14) Personally monitor investigation of cases relating to custodial deaths, rape and torture/illegal detentions in police custody and take remedial measures/follow-up departmental action.

15) Actively promote human rights literacy and awareness through publications and media programmes.

16) Publication of quarterly Newsletter on "Human Rights in Law Enforcement" for circulation amongst police officers.

Sd/-

(D.R. Karthikeyan)
Director General (Inv.)

Improving Police-Public Relationship and Confidence

Letter to Chief Secretaries, Directors General of Police of all States and Union Territories and Commissioners of Police on measures for improving police-public relationship and confidence

D.R. Karthikeyan
Director General (Inv.)

राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

22 December, 1999

Dear

The bulk of the complaints received by the National Human Rights Commission concerns security forces. Again most of such complaints relate to alleged commissions and omissions on the part of the police during the investigation. Many of them pertain to non-registration of complaints, delayed investigations, investigations not being done fairly, objectively and impartially and the inaccessibility of police officers.

It goes without saying that to be effective and successful, the police must enjoy the trust, confidence and respect of the people living in the jurisdiction. The Commission advises all the States to comply with the following suggestions, which are already in force in the State of Kerala to improve police-public relationship and confidence and also to effectively prevent violation of law and to detect crimes that may occur.

For removing such apprehensions and difficulties, the following steps may be adopted:

I. **Toll free phone number for public to convey crime intelligence/information to the police**

a. A toll free telephone number which is **1090** is given for the entire State of Kerala. For the purpose of uniformity all over the country, all the States could adopt No. **1090** for this purpose.

b. Any member of the public can ring up **1090** which will be installed in the Police Control Room/Police Station/Sub-Divisional Office. This will be toll free within the State even on the STD from remote parts of the District and the State.

c. While recording the information on phone No. **1090,** the caller will not be compelled to give his name and address. If the caller so desires, a code number may be given to him so that at a future date, the caller can call **1090,** identify himself with the code number and get to know the result of the investigation as a result of his information.

d. In appropriate cases where valuable information results in detection of quality cases, the caller/informant could be rewarded or his public-spirited service could be recognized by way of issuing a commendation certificate at the appropriate level.

Constitution of District Complaints Authority

Letter to Chief Justices of all High Courts on the constitution of District Complaints Authority

Dr. Justice K. Ramaswamy
Member

राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

No. 4/10/99-PRP&P
December 24, 1999

Dear Brother Chief Justice,

The Commission is deeply concerned at the criticism that the public authorities are abusing and misusing their power to trample the human rights of the innocent people and, in particular, focus in the media on the excesses committed by the Police personnel. The Commission has deliberated on this and resolved to write to the State Governments to constitute a District Complaints Authority to examine the conduct of the public authorities and the growing tendency of incivility and rude behaviour towards the public, the arbitrary arrest of the people by the Police and their detention, allegations of false implication in criminal cases and custodial violence, etc. The Authority also, in case it finds that the complaints require to be dealt with either by the State Human Rights Commission, if existing, or the National Human Rights Commission, as the case may be, may refer to it their recommendation in that behalf which would be considered and action taken thereon. For that, the composition of the Authority may consist of (i) the Principal District Judge of the district concerned as Chairman; (ii) the District Collector/Deputy Commissioner in-charge of the district; (iii) the Sr. Supdt. of Police/Supdt. of Police in charge of the district as Members of the Authority; and (iv) the Supdt. of Police/Addl. Supdt. of Police, as the Ex-officio Member-Secretary of the Committee. The Committee is required to examine grievances of the public in the matters referred to above.

In the State of Kerala, such a system is already in existence as 'District Human Rights Authority'.

For the Principal District Judge of the concerned district to function as Chairman, it would be obvious that permission from the High Court is necessary. In the matters referred to above, the learned District Judge does not directly deal with them on the judicial side, nor has he any supervisory jurisdiction on the administrative side. Under these circumstances, the Commission is of the view that the learned District Judge may act as Chairman of the District Complaints Authority, as it does not, in any way, come in conflict with his discharge of the functions on the judicial side. On the other hand, he being the Chairman of the District Complaints Authority, would infuse credibility and a sense of seriousness in other wings of the Government also. This would enable the National Human Rights Commission to effectively monitor the protection and promotion of human rights in the society.

I would, therefore, request the High Court through you to consider issuing the necessary directions to the learned District Judges in this behalf. The action taken may kindly be intimated.

With regards,

Yours sincerely,

Sd/-

(Dr. Justice K. Ramaswamy)

To

Chief Justices of all High Courts.

Letter to Chief Ministers/Administrators of all States/Union Territories on the District Complaints Authority

Dr. Justice K. Ramaswamy
Member

राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

No. 4/10/99-PRP&P
December 24, 1999

Dear

The National Human Rights Commission has been receiving innumerable complaints against the civilian authorities and Police personnel criticising that they are abusing and misusing power and tend to trample the human rights of the innocent people and, in particular, focus in the media on the atrocities committed by the Police personnel. The Commission, therefore, after deep deliberation, decided to suggest constitution of District Complaints Authorities consisting of the Principal District Judge of the concerned district, the District Collector/Deputy Commissioner in-charge of the District civil administration, the Sr. Supdt. of Police, Supdt. of Police in-charge of a District police administration, as Members of the District Complaints Authority, and the Supdt. of Police/Addl. Supdt. of Police to act as the Ex-officio Member-Secretary of the Authority to whom the complaints would be addressed and appropriate recommendations, if necessary, could be made to the State Human Rights Commission, if any in existence, or to the National Human Rights Commission. In the State of Kerala, such a District Complaints Authority named as 'District Human Rights Authority' for each district has been constituted and is functioning effectively. The functioning of a District Complaints Authority would inculcate a sense of responsibility in the conduct of the public officials and create faith and confidence among the people in the rule of law.

I would, therefore, request you to kindly constitute District Complaints Authority and advise the Chief Secretary and D.G.P. of your State to instruct District Collectors/Deputy Commissioners and Sr. Supdts. of Police/Supdts. of Police to act as Members and Supdt. of Police/Addl. Supdt. of Police as Ex-officio Member-Secretary of the District Complaints Authority and the District Judge to act as Chairman with public notice of its constitution and function. This step would go a long way to infuse confidence of the people in the rule of law. The action taken may kindly be intimated.

With regards,

Yours sincerely,

Sd/-

(Dr. Justice K. Ramaswamy)

To

Chief Ministers/Administrators of all States/Union Territories.

Promoting Human Rights Culture

Letter to Chief Ministers/Administrators of all States/Union Territories on promoting human rights culture among the police personnel

Justice J.S. Verma
Chairperson

राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

January 1, 2000

Dear

You may be aware that on the recommendations of the National Human Rights Commission, the State Police had set up the Human Rights Cell in its police Headquarters. The main objective of the setting up of this Cell was to provide an in-house machinery in the police organisation itself to supervise the conduct of its police personnel and prevent any violation of human rights of the people by the police force itself which is meant to be people-friendly.

It has been noticed that even after the Human Rights Cell headed by the DGP/IGP was made functional, there has not been any significant decline in genuine complaints of human rights violations committed by the police. There can be no serious dispute about the need to improve the mind-set of the personnel wielding power and authority and thereby the perception necessary for the appropriate human rights culture which is people-friendly.

I need hardly emphasise that the acknowledged index of civilization in the international community is the track record of respect for human rights in a country. The importance of making every effort to improve our human rights record is, therefore, obvious. Unsatisfactory and inhuman living conditions in prisons is a serious human rights violation, which requires prompt action for its correction.

Recently the Commission has framed and released its 'Guidelines on Police Arrests' which requires strict observance. This step would prevent human rights violations in a large area, which is a daily police function.

I earnestly hope that all instruments of governance would rededicate themselves towards promoting a better human rights culture realising that dignity of the individual is a part of the constitutional promise and it contributes to the augmentation of human resource development in the nation. I have no doubt you would equally share this concern and take the needed steps in that direction.

With regards,

Yours sincerely,

Sd/-

(J.S. Verma)

To

The Chief Ministers/Administrators of all States/Union Territories.

V. Human Rights In Prisons

Mentally Ill Persons in Prisons

Letter to Chief Ministers/Administrators of all States/Union Territories on mentally ill persons languishing in prisons

Justice Ranganath Misra
Chairperson

राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

11 September, 1996

My Dear

It has come to the notice of the Commission that several mentally ill persons, as defined in Section 2(1) of the Mental Health Act, 1997, have been languishing in normal jails and are being treated at par with prisoners. The Commission has also come across cases where such detention is not for any definite period.

The Lunacy Act, 1912 and the Lunacy Act, 1977 have been repealed by the Mental Health Act which has come into force with effect from 1.4.1993.

The Mental Health Act does not permit the mentally ill persons to be put into prison. The Patna High Court has last week directed the State of Bihar to transfer mentally ill persons languishing in the jails to the mental asylum at Ranchi.

While drawing your attention to the legal position and order of the Patna High Court, we would like to advise that no mentally ill person should be permitted to be continued in any jail after 31 October, 1998, and would, therefore, request you to issue necessary instructions to the Inspector General of Prisons to enforce it.

After 1st November, 1996, the Commission would start inspecting as many jails as possible to find out if any mentally ill person is detained in such jails and invariably in every such case, it would award compensation to the mentally ill persons or members of the family and would require the State Government to recover the amount of such fine from the delinquent public officer. A copy of this letter may be widely circulated to the Inspector General of Prisons, Superintendents of every jail and members of the jail staff and other district level officers.

With regards,

Yours sincerely,

Sd/-

(Ranganath Misra)

To

All the Chief Ministers/Administrators of States/UTs.

Letter to Chief Ministers/Administrators of all States/Union Territories reiterating the instructions of the Commission to safeguard the rights of mentally ill persons languishing in prisons

Justice J.S. Verma
Chairperson

राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

7 February, 2000

Dear

The National Human Rights Commission is receiving distressing reports from different States regarding the sad plight of mentally ill persons languishing in prisons without proper care and attention. They are being treated like any other prisoner. Recently, an officer of the Commission visited a Central Prison in a North-Eastern State and found to his horror that as many as 44 mentally deranged persons were lodged in the prison. They were not receiving proper psychiatric treatment and attention.

May I invite your attention to the fact that the Mental Health Act, 1987 which came into force with effect from 1.4.1993, does not permit lodging of mentally ill persons in prisons. This is a very insensitive manner of dealing with them. They are meant to be kept in mental asylums and provided proper treatment. Indeed, detention of mentally ill persons in jail amounts to an egregious violation of human rights. The State Governments cannot escape their obligation to provide proper psychiatric treatment to the mentally ill. Further, it has been brought to my notice that a number of non-criminal lunatics are also being kept in jails in violation of existing Prison Rules.

Earlier, my predecessor had in his letter dated 11 September 1996, clearly said that if the Commission's officers during jail inspections detect presence of mentally sick persons in jails, the Commission would award compensation to them or to members of their families and further direct the State Government to recover the amount of compensation from the jail officers responsible for this lapse. I deem it necessary to redeem this instruction of the Commission to safeguard the rights of the unfortunate and hapless mentally ill persons now lodged in jails.

I request you to issue clear directions to the Inspector General of Prisons to ensure that mentally ill persons are not kept in jail under any circumstances. Moreover, the State Government must make proper arrangements for their treatment in approved mental institutions and not treat them as unwanted human beings.

With regards,

Yours sincerely,

Sd/-

(J.S. Verma)

To

All Chief Ministers/Administrators of States/UTs.

Fixation of Tenure of IG Prisons for Effective Prison Administration

Letter to Chief Ministers / Administrators of all States / Union Territories on the fixed tenure for Inspector General of Prisons

Justice Ranganath Misra
Chairperson

राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

September 25, 1996

My Dear

One of the important functions of the National Human Rights Commission, as provided under Section 12(c) of the Protection of Human Rights Act, 1993, is to "visit under intimation to the State Government, any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon". The Commission has visited a number of prisons all over the country and also inquired into a large number of complaints alleging violation of human rights received from the prisoners in several jails. The Commission feels that there is a crying need for revamping the prison administration of the country and bring about systemic reforms. In this connection, I would like to draw your attention towards my letter No. NHRC/Prisons/96/2 dated 29.8.96 sent to you wherein I enclosed a copy of the Prison Bill prepared by us and sought your co-operation for the enactment of a new Prison Act to replace the century old Prison Act of 1894.

I would also like to draw your attention to another matter of importance concerning prison administration. We find that in most of the States, the post of Inspector General of Prisons is filled up by officers either from the Indian Administrative Service or Indian Police Service. The usual tenure of the officer is very brief, and most of them look upon their posting as Inspector General of Prisons as an inconvenient one and look ahead for an early transfer to other posts in the main line of administration. The result is frequent transfer of officers appointed as Inspector General of Prisons. Sometimes the post is also left vacant for a long time. For qualitative improvement of prison administration in the country, we feel that the selection of officers to head the prison administration deserves to be done carefully. An officer of proven integrity and merit– simultaneously disciplined and yet humane — may be selected for the post and should be continued in the post for a certain period time - say about three years - with a view to imparting continuity and dynamism to the prison administration. This will provide efficient and capable leadership for the prison service and help in improving prison administration in the country.

We look forward for your favourable response.

With regards,

Yours sincerely,

Sd/-
Ranganath Misra

To

Chief Ministers/Administrators of all States/UTs.

Letter to Chief Ministers / Administrators of all States / Union Territories reiterating fixation of tenure for Inspector General of Prisons

Justice J.S. Verma
Chairperson

राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

December 21st, 1999

Dear

One of the important functions of the National Human Rights Commission as provided under Section 12 of the Protection of Human Rights Act, 1993 is to "visit, under intimation to the State Government, any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon". The Commission during the last 5 years undertook visits to a large number of prisons all over the country, enquired into numerous complaints regarding violation of human rights from prisoners and highlighted the need for prison reforms in its orders and reports. The Commission strongly feels that there is an urgent need for systemic reforms in prisons.

In this connection, I intend to draw your attention to another matter of importance concerning prison administration. The post of the Inspector General of Prisons, who heads the prison administration in the State is, now filled up by officers either from the Indian Administrative Service or the Indian Police Service. However, the Commission is pained to observe that usual tenure of the officers is too brief and most of them view the posting as I.G. Prisons as an inconvenient loop-line job and look ahead for suitable posts in the mainstream of general administration. The upshot is that Inspector General of Prisons do not continue in this post for a fixed period and become birds of passage. Sometimes the post remains vacant for a long time. Such a situation, you will agree with me, is not conducive to efficient prison administration.

In order to bring about a qualitative improvement in the prison administration, the Commission is of the view that the selection of officers for the posts of Inspectors General of Prisons be done carefully. An officer of proven integrity and competence with faith in human rights culture may be selected for the post and he may be allowed to continue in the post for a minimum period of about three years. This will impart continuity and dynamism and will also provide efficiency and credible leadership to the prison administration.

Earlier my predecessor had written to you vide letter no. NHRC Prison/SP-II/96 dated 25 September 1996 on this subject. However, I felt that I should write to you again and re-emphasise the need for a fixed tenure of Inspector General of Prisons after careful

selection. This step, on your part, will go a long way in improving the quality and promoting concern for human rights in the prison administration.

I look forward to an early and positive response.

With regards,

Yours sincerely,

Sd/-
(J.S. Verma)

To

The Chief Ministers/Administrators of all States/Union Territories.

Medical Examination of Prisoners

Letter to all Chief Secretaries/Administrators/IG (Prisons) of States/Union Territories regarding prisoners health care – periodical medical examination of undertrials/convicted prisoners in the jail

Lakshmi Singh
Joint Secretary

राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

D.O. No. 4/3/99-PRP & P
11 February, 1999

Dear

Subject:- Prisoners' health care — periodical medical examination of undertrials/ convicted prisoners in various jails in the country

The Commission has taken note of the disturbing trends in the spread of contagious diseases in the prisons. One of the sample-studies conducted by the Commission indicated that nearly seventy-nine percent of deaths in judicial custody (other than those attributable to custodial violence) were as a result of infection of Tuberculosis. These statistics may not be of universal validity, yet what was poignant and pathetic was that in many cases, even at the very first medical attention afforded to the prisoners the tubercular infection had gone beyond the point of return for the prisoners. The over-crowding in the jails has been an aggravating factor in the spread of contagion.

One of the remedial measures is to ensure that all the prison inmates have periodic medical check-up particularly for their susceptibilities to infectious diseases and the first step in that direction would necessarily be the initial medical examination of all the prison inmates either by the prison and Government doctors and in the case of paucity or inadequacy of such services, by enlisting the services of voluntary organizations and professional guilds such as the Indian Medical Association. Whatever be the sources from which such medical help is drawn, it is imperative that the State Governments and the authorities incharge of prison administration in the States should immediately take-up and ensure the medical examination of all the prison inmates; and where health problems are detected to afford timely and effective medical treatment.

Kindly find enclosed proceedings of the meeting of the Commission held on 22.1.99 which also includes a proforma for health screening of prisoners on admission to jail. The Commission accordingly requires that all State Governments and prison administrators should ensure medical examination of all the prison inmates in accordance with the attached proforma. The Commission further requires that such medical examination shall be taken-up forthwith and monthly reports of the progress be communicated to the Commission.

With regards,

Yours sincerely,

Sd/-

(Lakshmi Singh)

To

Chief Secretaries/Administrators/IG Prisons of all States/UTs.

NATIONAL HUMAN RIGHTS COMMISSION
SARDAR PATEL BHAVAN
NEW DELHI
****

PROCEEDINGS

The Commission considered the problem of periodic medical examination of the undertrial and convicted prisoners in various jails in the counry, particularly in view of the disturbing trends in the spread of contagious diseases in the prisons. Particularly, alarming are incidents of Tuberculosis. Indeed, one of the sample studies conducted by the Commision indicated that nearly seventy-nine percent of deaths in judicial custody (otherwise than those attributable to custodial violence) were as a result of infection of Tuberculosis. Though these statistics may not be of universal validity, what was poignant and pathetic was that in many cases, even at the very first medical attention afforded to them, the illness had gone beyond the point of return for the prisoner. The prison rules require medical examination of the prison inmates upon or immediately after admission. It is a distressing situation that conduct of such initial medical examination is more an exception than the normal.

The problem of spreading of contagious diseases is aggravated by the well known and what now seems almost an irremediable situation, of enormous overcrowding in prisons. One of the remedial measures is to ensure that all the prison inmates have periodic medical check-up for their susceptibilities to infectious diseases and the first step in that direction would necessarily be the initial medical examination of all the prison inmates either by the prison and Government doctors and in the case of paucity or inadequacy of such services, by entrusting the services of voluntary organisations and the Indian Medical Association. Whatever be the sources from which such medical help is drawn, it is imperative that the State Governments and the authorities incharge of prison administration in the States should immediately take-up and ensure the medical examination of all the prison inmates and where health problems are detected affording timely and effective treatment. This is in view of the seriousness of the situation of infectious diseases and the gravity of the problem of cross-infection which has the prospect that persons upon being held innocent at the end of the day or after serving the sentence may find themselves in a worse position health-wise than when they entered the prison, particularly with the added danger of affliction of drug - resistant infections. The Commission justifiably places serious store by the need for and importance of such initial medical examination of all the prison inmates in the various prisons in the States.

The Commission accordingly requires that all States Governments and prison administrators should ensure medical examination of all the prison inmates in accordance with the proforma at Appendix-I annexed hereto. The Commission further requires that such medical examination shall be taken-up forthwith and monthly reports of the progress be communicated to the Commission.

Shri Sankar Sen, Special Rapporteur and Chief Coordinator of Custodial Justice Programme of the Commission shall be required to monitor these efforts of the State Governments and to assist and guide the prison administrators of the States in this behalf. Shri Sankar Sen will also keep the Commission apprised of the progress achieved by monthly reports submitted to the Commission.

These proceedings shall immediately be communicated by the Secretary General to all the Chief Secretaries and Inspector Generals of Prisons in the States. The office shall also forward copies to all the Superintendents of Jails in the country.

Sd/-
(Justice M.N. Venkatachaliah)
Chairperson

Sd/-
(Justice Shri V.S. Malimath)
Member

Sd/-
(Sri Sudarshan Agarwal)
Member

Sd/-
(Sri Virendra Dayal)
Member

January 22, 1999

APPENDIX - I

PROFORMA FOR HEALTH SCREENING OF PRISONERS ON ADMISSION TO JAIL

Case No. .....
Name ..... Age ..... Sex ..... Thumb impression.....
Father's/Husband's Name ..... Occupation .....
Date & Time of admission in the prison .....
Identification marks .....

Previous History of illness

Are you suffering from any disease? Yes/No

If so, the name of the disease :

Are you now taking medicines for the same?

Are you suffering from cough that has lasted for 3 weeks or more Yes/No

History of drug abuse, if any:

Any information the prisoner may volunteer:

Physical examination:

Height.....cms. Weight..... kg. Last menstruation period .....

1. Pallor : Yes/NO
2. Lymph Mode enlargement: YES/NO
3. Clubbing : YES/NO
4. Cyanosis: YES/NO
5. Icterus: YES/NO
6. Injury, if any .....

4. Blood test for Hepatitis/STD including HIV, (with the informed consent of the prisoner whenever required by law)

5. Any other .....

Systemic Examination

1. Nervous System

2 Cardio Vascular System

3. Respiratory System

4. Eye, ENT

5. Gastro Intestinal system abdomen

6. Teeth & Gum

7. Urinal System

The medical examination and investigations were conducted with the consent of the prisoner after explaining to him/her that it was necessary for diagnosis and treatment of the disease from which he/she may be suffering.

Date of commencement of medical investigation

Date of completion of medical investigation

Medical Officer

Undertrial Prisoners

Letter to all Inspectors General of Prisons of States on speedy trial of undertrial prisoners

Sankar Sen
SPECIAL RAPPORTEUR

D.O. No. 11/1/99-PRP&P
राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

29.04.1999

Dear

The problems of undertrial prisoners has now assumed an alarming dimension. Almost 80% of prisoners in Indian jails are undertrials. The majority of undertrial prisoners are people coming from poorer and underprivileged sections of the society with rural and agricultural background. The Supreme Court in a memorable judgement—Common Cause (a registered society) vs. Union of India, 1996 has given the following directions regarding the release of undertrials on bail.

(a) Undertrials accused of an offence punishable with imprisonment upto three years and who have been in jail for a period of 6 months or more and where the trial has been pending for atleast a year, shall be released on bail.

(b) Undertrials accused of an offence punishable with imprisonment upto 5 years and who have been in jail for a period of 6 months or more, and where the trial has been pending for atleast two years, shall be released on bail.

(c) Undertrials accused of offences punishable with imprisonment for 7 years or less and who have been in jail for a period of one year and where the trial has been pending for two years shall be released on bail.

(d) The accused shall be discharged where the criminal proceedings relating to traffic offence have been pending against them for more than 2 years.

(e) Where an offence compoundable with the permission of the court has been pending for more than 2 years, the court shall after hearing public prosecutor discharge or acquit the accused.

(f) Where non-cognizable and bailable offence has been pending for more than 2 years, without trial being commenced, the court shall discharge the accused.

(g) Where the accused is discharged of an offence punishable with fine only and not of recurring nature and the trial has not commenced within a year, the accused shall be discharged.

(h) Where the offence is punishable with imprisonment upto one year and the trial has not commenced within a year, the accused shall be discharged.

(i) Where an offence punishable with an imprisonment upto 3 years and has been pending for more than 2 years, the criminal courts shall discharge or acquit the accused as the case may be, and close the case.

However, the directions of the court shall not apply to cases of offences involving (a) corruption, misappropriation of public funds, cheating, whether under the Indian Penal Code, Prevention of Corruption Act, 1947 or any other statute, (b) smuggling, foreign exchange violation and offences under the Narcotics Drugs and Psychotropic Substances Act, 1985, (c) Essential Commodities Act, 1955; Food Adulteration Act, Acts dealing with environment or any other economic offences, (d) offences under the Arms Act, 1959; Explosive Substances Act, 1908; Terrorists and Disruptive Activities Act, 1987, (e) offences relating to the Army, Navy and Air Force, (f) offences against public tranquility and (g) offences relating to public servants, (h) offences relating to elections, (i) offences relating to giving false evidence and offences against public justice, (j) any other type of offences against the State, (k) offences under the taxing enactments and (l) offences of defamation as defined in Section 499 IPC.

The Supreme Court has given further directions that the criminal courts shall try the offences mentioned in para above on a priority basis. The High Courts are requested to issue necessary directions in this behalf to all the criminal courts under their control and supervision.

These directions of the Supreme Court aim at streamlining the process of grant of bail to the undertrials and make it time-efficient. The judgement, however, does not provide for *suo-moto* grant of bail to the petitioners by the trial court. This implies that an application would have to be made to move the court for grant of bail. There is also no mechanism in the courts to automatically dispose off suitable cases. They are dependent upon filing of bail petitions and more important on the production of prisoners in time. You are requested to meet the Registrar of the High Court, State Legal Aid Authorities and take measures for release of undertrial prisoners in consonance with the Judgement of the Apex Court. Release of undertrial prisoners will lessen the congestion in jail and help more efficient prison management. The process thus needs a high degree of coordination between the judiciary, the police and the prison administration which unfortunately is now lacking.

The majority of undertrial prisoners are people coming from poorer and underprivileged sections of the society with rural and agricultural background.

Yours sincerely,

Sd/-

(Sankar Sen)

To

All Inspectors General of Prisons.

Letter to Chief Justices of all High Courts on undertrial prisoners

Dr. Justice K. Ramaswamy
Member

राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

December 22, 1999

Dear Brother Chief Justice,

Right to speedy trial is a facet of fair procedure guaranteed in Article 21 of the Constitution. In Kartar Singh's case (Constitutionality of TADA Act case), J.T. 1992(2) SC 423, the Supreme Court held that speedy trial is a component of personal liberty. The procedural law—if the trial is not conducted expeditiously, becomes void, violating Article 21 as was held in Hussain Ara's four cases in 1979. In Antulay's case, 1992(1) SCC 215, a constitution bench directed completion of the trial within two years in cases relating to offences punishable upto 7 years, and for beyond seven years, within a period of three years. If the prosecution fails to produce evidence before the expiry of the outer limit, the prosecution case stands closed and the court shall proceed to the next stage of the trial and dispose it off in accordance with law. That view was reiterated per majority even in the recent judgement of the Supreme Court in Raj Deo Sharma (II) versus Bihar, 1999 (7) SCC 604 by a three-Judge bench.

In Common Cause case, 1996 (6) SCC 775 – in D.O. Sharma I's case — it was held that the time taken by the courts on account of their inability to carry on the day-to-day trial due to pressure of work, will be excluded from the dead-line of two years and three years, respectively, imposed in the aforesaid cases. In the latest Raj Deo Sharma's case 1999 (7) SCC 604 majority reiterated the above view.

In Common Cause case, 1996 (4) SCC 33, the Supreme Court directed release of the undertrial prisoners, subject to certain conditions mentioned therein. The principle laid down in Common Cause case is not self-executory. It needs monitoring, guidance and direction to the learned Magistrates in charge of dispensation of criminal justice system at the lower level, before whom the undertrial prisoners are produced for extension of the period of remand. It is common knowledge that it is the poor, the disadvantaged and the neglected segments of the society who are unable to either furnish the bonds for release or are not aware of the provisions to avail of judicial remedy of seeking a bail and its grant by the court. Needless or prolonged detention not only violates the right to liberty guaranteed to every citizen, but also amounts to blatant denial of human right of freedom of movement to these vulnerable segments of the society who need the protection, care and consideration of law and criminal justice dispensation system.

In this background, may I seek your indulgence to consider the above perspectives and to set in motion appropriate directions to the Magistracy to follow-up and implement the law laid down by the Supreme Court in the Common Cause II case? For your ready reference, the principles laid therein are deduced as set guidelines are enclosed herewith.

I had a discussion with the Hon'ble Chief Justice of Andhra Pradesh High Court, who was gracious enough to have them examined in consultation with brother Judges and necessary directions issued to all the Magistrates and Sessions Judges to follow-up the directions and ensure prevention of unnecessary restriction of liberty of the under-privileged and poor undertrial prisoners. I would request you to kindly consider for adoption and necessary directions issued to the Magistrates and Sessions Judges within your jurisdiction to follow-up and ensure enjoyment of liberty and freedom of movement by poor undertrial prisoners.

With regards,

Yours sincerely,

Sd/-

(Dr. Justice K. Ramaswamy)

To

Chief Justices of all High Courts.

Draft Circular/Memorandum to be Issued by the High Court of Andhra Pradesh to All the District and Sessions Judges

All the District and Sessions Judges of Andhra Pradesh, are aware of the directions of the Supreme Court of India issued on May 1st, 1986 in Writ Petition (C) No. 1128 of 1986 (Common Cause vs. Union of India and Others) wherein elaborate directions were given regarding release of undertrials languishing in jails for long periods.

The directions of the Supreme Court are reproduced hereunder for ready reference:

"(a) Where the offences under IPC or any other law for the time being in force for which the accused are charged before any criminal court are punishable with imprisonment not exceeding three years with or without fine and if trials for such offences are pending for one year or more and the accused concerned have not been released on bail but are in jail for a period of six months or more, the criminal court concerned shall release the accused on bail or on personal bond to be executed by the accused and subject to such conditions, if any, as may be found necessary, in the light of Section 437 of the Criminal Procedure Code (Cr. PC).

(b) Where the offences under IPC or any other law for the time being in force for which the accused are charged before any criminal court are punishable with imprisonment not exceeding five years, with or without fine, and if the trials for such offences are pending for two years or more and the accused concerned have not been released on bail but are in jail for a period of six months or more, the criminal court concerned shall release the accused on bail or on personal bond to be executed by the accused and subject to the imposing of suitable conditions, if any, in the light of Section 437 Cr. PC.

(c) Where the offences under IPC or any other law for the time being in force for which the accused are charged before any criminal court are punishable with seven years or less, with or without fine, and if the trials for such offences are pending for two years or more and the accused concerned have not been released on bail but are in jail for a period of one year or more, the criminal court concerned shall release the accused on bail or on personal bond to be executed by the accused and subject to the imposing of suitable conditions, if any, in the light of Section 437 Cr. PC."

It is noticed that the various remanding courts in Andhra Pradesh are routinely extending the periods of remand of prisoners without verifying whether any of them fall under any of the 3 categories mentioned by the Supreme Court supra.

It is also noticed that the District Level Review Committees for Undertrial Prisoners constituted with the concurrence of the High Court by the Government of Andhra Pradesh vide G.O. Ms. 356 dated 14.7.1980 of Home (Prisons. 13) Department have not been regularly meeting in all the Districts. Even if they do meet they are not examining whether the cases being reviewed fall under any of the 3 categories mentioned by the Supreme Court of India.

In order to ensure that the directions of the Supreme Court of India are scrupulously complied with, and Undertrial Prisoners do not languish in jails for long periods, the following instructions are issued for immediate implementation:

1. All Courts, whether Judicial Magistrates of First Class or Special Courts, before extending the period of remand of any prisoners, should ascertain the period of remand already undergone by the prisoner and examine whether he is entitled to be released on bail as per the directions/not able to furnish surety/security. They may be released on personal bonds to ensure their attendance on the dates of hearing.

2. The District Level Review Committees for Undertrial Prisoners should meet, without fail, atleast once in every 3 months and review the cases of all prisoners who are in Judicial Custody for periods of six months or more. These meetings should invariably be presided over by the Principal District & Sessions Judge himself.

3. As and when a case falling under any of the 3 categories mentioned by the Supreme Court is noticed, either while extending the period of remand of the Undertrial Prisoner or during the meeting of the District Level Review Committees, the concerned Court should, *suo moto,* "release the accused on bail or on personal bond to be executed by the accused and subject to such conditions, if any, as may be found necessary, in the light of Section 437 of the Code of Criminal Procedure.

Letter to all Chief Justices of High Courts on the plight of undertrial prisoners

Dr. Justice A.S. Anand
Chairperson
(Former Chief Justice of India)

NHRC/CJC/UTP/2003
राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

1st July, 2003

Dear Chief Justice,

I am writing to you on a matter, which has been a source of concern to you as well as to myself—the plight of under-trial prisoners.

While as Chief Justice of India, I had written to the Chief Justices of all the High Courts on 29th November, 1999 about the plight of under-trial prisoners languishing in jails, even in cases involving petty and bailable offences merely for the reason that they were not in a position to furnish bail bonds to get released on bail. I had suggested that every Chief Metropolitan Magistrate or the Chief Judicial Magistrate of the area in which a District jail falls, may hold its court once or twice in a month in jail, depending on the work load, to take up the cases of those under-trial prisoners who were involved in petty offences and or were keen to confess their offences. I had tried to monitor the progress of action initiated by most of you on my suggestion and pursued the matter further vide my letters dated 14th April, 2000 and 11th January, 2001.

I wish to continue my efforts in regard to under-trial prisoners in my capacity as the Chairperson of the NHRC which has been considering human rights of prisoners as an area of special concern ever since its establishment in 1993.

Visiting jails to study the living conditions of prisoners is one of the mandatory functions of the Commission as spelt out in Section 12 (c) of the Protection of Human Rights Act, 1993. Visits to jails in various States by the Members and senior officers of the Commission especially the Special Rapporteurs bring out a very dismal picture of prison life in our country. The Commission has observed that in most States jails are overcrowded, standard of sanitation and hygiene is poor, medical facilities are inadequate and the overall atmosphere is depressingly sad. Overcrowding which throws every system and facility out of gear, is found to be the root-cause of the deplorable living conditions in our jails. It constitutes a glaring violation of the basic human right to life which means life with dignity.

For the past two years, the Commission has been conducting bi-annual analysis of prison population by obtaining data of prison population from all the States/Union

Territories as of 30 June and 31 December of every year. I thought, I should share with you an important feature of the analysis of prison population as of 30 June, 2002 conducted recently. The analysis reveals that:

i) Prison population of the entire country was 3,04,813 against the built-in capacity of 2,32,412. It shows an overcrowding of 31.2% for the country as a whole. However, in some States/UTs such as Delhi, Jharkhand, Chhatisgarh, Gujarat, Haryana and Bihar, prison population is 2 to 3 times of the total capacity of all the jails.

ii) Under-trial constitute about 75% of the prison population in the country as a whole. The proportion of under-trials to the total prison population is 80% or more in 7 States and one UT. It is 100% in the Union Territory of Dadar and Nagar Haveli.

iii) State/UT-wise position of jail population, degree of overcrowding and percentage of under-trials is given in the Annexure attached to this letter.

The Commission finds that despite several pronouncements of the Hon'ble Supreme Court of India and certain High Courts on the subject, under-trials are languishing in jails in large numbers all over the country. Slow progress of cases in Courts and the operation of the system of bail to the disadvantage of the poor and the illiterate prisoners is responsible for the pathetic plight of these "forgotten souls" who continue to suffer all the hardships of incarceration although their guilt is yet to be established. It is the overwhelming congestion of under-trials in jails which is making it difficult for the Prison Administration to ensure that the basic minimum needs of the prisoners such as accommodation, sanitation and hygiene, water and food, clothing and bedding and medical facilities are satisfied.

I am sure you appreciate and share the Commission's concern for human rights of the prisoners. In my opinion, the following measures may be found useful in reducing the congestion of under-trials in the prisons of your State:

(i) Regular holding of special courts in jails and its monitoring by the Chief Justice/senior Judge of the High Court.

(ii) Monthly review of the cases of under-trials in the light of the Supreme Court's judgement in Common Cause vs. Union of India [1996(4) SCC 33 and 1996 (6) SCC 775)]. In this judgement, the Supreme Court has issued clear directions for (a) release on bail and (b) discharge of certain categories of under-trials specified in the judgement.

(iii) Release of under-trials on Personal Bonds: A number of under-trials are found to be languishing in jails even after being granted bail simply because

they are unable to raise sureties. Cases of such under-trials can be reviewed after 6-8 weeks to consider their suitability for release on personal bonds, especially in cases when they are first offenders and punishment is also less than 2/3 years.

(iv) Visit of District and Sessions Judge to Jail: The Jail Manuals of all the States contain provisions for periodical visit of the District and Sessions Judge as an ex-officio visitor to jails falling within their jurisdiction. Besides ensuring an overall improvement in management and administration of the Prison, such visits can help in identifying the cases of long-staying under-trials, which need urgent and special attention. The Commission has observed a mark improvement in the situation in the States where this obligation is being discharged seriously and sincerely by the subordinate judiciary. It would be useful to issue directions for such visits by all the ex-officio visitors to jails falling in their jurisdictions.

May I also request you to keep us informed at the NHRC about the Action Taken so that we are in a position to circulate the same to other States with a view to bring about uniformity as well as intensity.

I shall feel privileged to receive any suggestions from you to deal with the problems of under-trial prisoners.

With warm regards,

Yours sincerely,

Sd/-

(A.S. Anand)

To

All Chief Justices of High Courts.

ANNEXURE

CUSTODIAL JUSTICE CELL
PRISON STATISTICS AS ON 30-6-02

S. No.	STATES	Jails Capacity	% Overcrowding, (-) means idle capacity	% UTs.
1.	ANDHRA PRADESH	10794	20.51	67.07
2.	ARUNACHAL (No Jail)			
3.	ASSAM	6193	11.64	64.15
4.	BIHAR	21759	73.78	86.27
5.	CHHATTISGARH	4438	110.16	52.42
6.	GOA	294	39.46	60.49
7.	GUJARAT	5418	100.22	73.7
8.	HARYANA	5567	99.95	68.6
9.	HIMACHAL PRADESH	868	0.92	54.45
10.	JAMMU & KASHMIR	3100	-58.55	91.67
11.	JHARKHAND	5788	164.86	83.26
12.	KARNATAKA	9191	11.37	79.34
13.	KERALA	5904	-9.4	68.52
14.	MADHYA PRADESH	16239	65.87	56.94
15.	MAHARASHTRA	19004	16.62	69.65
16.	MANIPUR	1170	-66.07	92.19
17.	MEGHALAYA	500	-2.6	94.66
18.	MIZORAM	1012	0.89	79.14
19.	NAGALAND	1160	-47.24	89.87
20.	ORISSA	7542	53.78	75.03
21.	PUNJAB	10854	16.97	68.24
22.	RAJASTHAN	15707	-22.67	63.84
23.	SIKKIM	100	72	51.16
24.	TAMIL NADU	19240	-55.62	36.16
25.	TRIPURA	744	34.81	57.93
26.	UTTAR PRADESH	32380	69.84	87.37
27.	UTTARANCHAL	2433	0.82	79.13
28.	WEST BENGAL	19666	-25.88	79.42
	Total States	227065	28.74	73.94
	Union Territories			
29.	ANDAMAN & NICOBAR	229	3.49	24.05
30.	CHANDIGARH	1000	-57.3	74.24
31.	DADAR & NAGAR HAVELI	40	-22.5	100
32.	DAMAN & DIU	120	-57.5	68.63
33.	DELHI	3637	217.4	78.52
34.	LAKSHADWEEP	16	-100	
35.	PONDICHERRY	305	-7.21	55.48
	TOTAL UTs	5347	135.14	76.84
	All India	232412	31.19	74.06

Premature Release of Prisoners

Letter to Chief Secretaries/Administrators of all States/Union Territories regarding the procedure/guidelines on premature release of prisoners

No. 233/10/97-98
NATIONAL HUMAN RIGHTS COMMISSION
(Law Division)

Dated : 8.11.99

To
Chief Secretaries of all States/Administrators of UTs

Subject : Procedure/Guidelines on Premature Release of Prisoners

Reference: Commission's letter of even number dt. 10.8.99

Sir,

I am directed to forward herewith a copy of the Commission's proceedings dated 20.10.99 alongwith Annexure for compliance by the State Government.

2. It is, requested, that an Action Taken Report in this matter may please be submitted by 24.12.1999 positively for placing the same before the Commission.

Yours faithfully,

Sd/-

Jt. Registrar (Law)

Encl.: As above

National Human Rights Commission
Sardar Patel Bhawan
New Delhi

Name of the Complainant	:	Shri K.N. Shashidharan
Case No.	:	233/10/97-98
Date	:	20th October, 1999

CORAM

Justice Shri M.N. Venkatachaliah, Chairperson
Dr. Justice K. Ramaswamy, Member
Shri Sudarshan Agarwal, Member
Shri Virendra Dayal, Member

PROCEEDINGS

The Commission examined the vexed question of disparities and differing standards applied by the various States in considering the cases of prisoners serving custodial sentences for premature release. The exercise is outside the powers of the Commission and rests with the constitutional functionaries under Articles 72 and 161 relating to the powers of the President and Governors. The matter is confined to the statutory powers of the State to grant remissions of and premature releases. By its earlier proceedings dated 20th July, 1999, the Commission recorded:

> "In order to ensure that, as far as possible, a greater uniformity of standards is established and achieved the Commission has evolved certain broad criteria after taking into account the practices and procedures existing in various States. This has been done on the basis of recommendations of a Committee consisting of Shri Sankar Sen (Special Rapporteur and the Chief Coordinator of the 'Custodial Justice Programme'), Shri D.R. Karthikeyan, Director General (I) and Shri R.C. Jain, Registrar General of NHRC.
>
> The Commission desires that the guidelines may be circulated to all the State Governments to elicit their views and responses in regard thereto. Letters shall accordingly be addressed to the Chief Secretaries of all State Governments to have the matter considered and their views and suggestions, if any, forwarded to the Commission on or before 30th September, 1999. On receipt of the same, the matter may be brought up again.

The guidelines may also be forwarded to the National Law School of India University, Bangalore for their opinion by the same date".

Some of the States and Union Territories which have responded are:

1. Lakshadweep
2. Delhi
3. Madhya Pradesh
4. Daman & Diu
5. Dadar & Nagar Haveli
6. Orissa
7. Meghalaya
8. Uttar Pradesh (Interim report)

Other States and Union Territories have not responded despite lapse of sufficient time. The National Law School of India University has also not offered its opinion.

The Commission has considered the matter and has evolved the guidelines (Annexure 'A') in the light of the suggestions received from the States.

These guidelines shall be implemented by the States and wherever the existing provisions of the rules are inconsistent with any of the aforesaid guidelines the State Government shall make appropriate modifications in the rules and implement the guidelines so that there is uniformity in this regard throughout the country. A report shall be had within six weeks.

Sd/-
(Justice K. Ramaswamy)
Member

Sd/-
(Sudarshan Agarwal)
Member

Sd/-
(Virendra Dayal)
Member

ANNEXURE - 'A'

Premature Release of the Prisoners Undergoing Sentence of Life Imprisonment—Eligibility Criteria for Constitution of Sentence Review Boards and Procedure to be Followed

The Commission has been receiving complaints from and on behalf of convicts undergoing life imprisonment about the non-consideration of their cases for premature release even after they have undergone long periods of sentence ranging from 10 to 20 years with or without remissions. Pursuant to the information received and closer study of the issues involved in this important issue impinging upon the human rights of a large number of convicts undergoing life imprisonment in the prisons throughout the length and breadth of the country, the Commission is surprised to note that although the said power of premature release is to be exercised by the State Government under the Provisions of Section 432 of the Code of Criminal Procedure, 1973, the procedure and practice followed by the State Governments to exercise the said power is not uniform.

Some of the States like Madhya Pradesh, Punjab and UP have incorporated the procedure in their special laws while others incorporated the same in their rules or jail manuals. The system provided for, differed from State to State so far as the eligibility criteria of the persons eligible for consideration for premature release, the composition of the Sentence Review Boards and the guidelines governing the question of premature release but the Commission has been informed that more often this system/procedure provided for was not being followed meticulously so much so that the Sentence Review Boards have not been meeting at regular intervals for long periods.

Several instances have come to the notice of the Commission where certain inmates were not released nor their cases considered even after they had undergone the imprisonment for over 20 years. The Commission has, therefore, shown its concern and is of the view that it is high time that a uniform system of premature release of the prisoners is evolved for adoption by the State Governments.

In its proceedings dated 4th March, 1999 in Case No. 233/10/97-98 and other linked cases, the Commission requested Shri R.C. Jain, Registrar General, Shri D.R. Karthikeyan, Director General (I) and Shri Sankar Sen (Special Rapporteur and the Chief Coordinator of the 'Custodial Justice Porgramme') to meet and evolve a set of recommendations for bringing uniformity to the procedure in all the States to follow. The Commission advised that while formulating the recommendations the Committee may have particular regard to the need not only to the constitution of the Review Boards, their proper composition but also to the question of ensuring promptitude of their meetings so that the unfortunate situation of the Boards, even where they exist but do not meet for a long time is avoided.

Accordingly, Committee has deliberated over the issue, considered the relevant law on the subject and the information received from most of the States as to the system of premature release being followed by them. The Committee in its endeavour to propose the uniform recommendations, also considered it proper to refer to the report and recommendations of the All India Committee on Jail Reforms 1980-83, constituted by Justice A.N. Mulla. The Committee makes the following observations & recommendations:

1. The relevant provisions in regard to the suspension and remission of sentence is contained in Section 432 of the Code of Criminal Procedure which reads as follows:

"Power to suspend or remit sentences-

(1) When any person has been sentenced to punishment for an offence, the appropriate Government may, at any time, without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

(2) Whenever an application is made to the appropriate Government for the suspension or remission of a sentence, the appropriate Government may require the presiding Judge of the Court before or by which the conviction was had or confirmed to state his opinion as to whether the application should be granted or refused together with his reasons for such opinion and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists.

(3) If any condition on which a sentence has been suspended or remitted is, in the opinion of the appropriate Government, not fulfilled, the appropriate Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police officer, without warrant and remanded to undergo the unexpired portion of the sentence.

(4) The condition on which a sentence is suspended or remitted under this Section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.

(5) The appropriate Government may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which petitions should be presented and dealt with:

Provided that in the case of any sentence (other than a sentence of fine) passed on a male person above the age of eighteen years, no such petition by the person sentenced or by any other person on his behalf shall be entertained, unless the person sentenced is in jail, and,—

(a) where such petition is made by the person sentenced, it is presented through the officer-in-charge of the jail; or

(b) where such petition is made by any other person, it contains a declaration that the person sentenced is in jail.

(6) The provisions of the above sub-sections shall also apply to any order passed by a Criminal Court under any Section of this Code or of any other law which restricts the liberty of any person or imposes any liability upon him or his property.

(7) In this Section and in Section 433, the expression "appropriate Government means,–

(a) in cases where the sentence is for an offence against, or the order referred to in sub-section (6) is passed under any law relating to a matter to which the executive power of the Union extends, the Central Government;

(b) in other cases, the Government of the State within which the offender is sentenced or the said order is passed".

1.1 The above power of remission of sentences under Section 432 is circumsized by the provisions of 433A which reads as under:

"Restriction on powers of remission or commutation in certain cases:— Notwithstanding anything contained in Section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted under Section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment."

2. COMPOSITION OF THE STATE SENTENCE REVIEW BOARDS

Each State shall constitute a Review Board for the review of sentence awarded to a prisoner and for recommending his premature release in appropriate cases. The Review Board shall be a permanent body having the following constitution:

1.	Minister in-charge, Jail Department/ Principal Secretary, Home/Principal Secretary in-charge of Jail Affairs/ Law & Order	-	Chairman
2.	Judicial Secretary/Legal Remembrancer	-	Member
3.	A District & Sessions Judge nominated by the High Court	-	Member

4.	Chief Probation Officer	-	Member
5.	A senior police officer nominated by the DG of Police not below the rank of IG of Police	-	Member
6.	Inspector General of Prisons	-	Member-Secretary

The recommendation of the Sentence Review Board shall not be invalid merely by reason of any vacancy in the Board or the inability of any Member to attend the Board meeting. The meeting of the Board shall not however be held, if the Coram is less than 4 Members including the Chairman.

2.2 PERIODICITY OF THE BOARD'S MEETINGS

The State Sentence Review Board shall meet at least once in a quarter at the State Headquarters on date to be notified to Members at least ten days in advance with complete agenda papers.

However, it shall be open to the Chairperson of the Board to convene a meeting of the Board more frequently as may be deemed necessary.

3. ELIGIBILITY FOR PREMATURE RELEASE

The following category of inmates shall be eligible to be considered for premature release by the State Sentence Review Boards:

3.1 Every convicted prisoner whether male or female undergoing sentence of life imprisonment and covered by the post provisions of Section 433A, Cr. PC shall be eligible to be considered for premature release from the prison immediately after serving out the sentence of 14 years of actual imprisonment, i.e. without remissions.

3.2 All other convicted male prisoners undergoing the sentence of life imprisonment shall be considered for premature release after they have served at least 14 years of imprisonment inclusive of remission and after completion of 10 years actual imprisonment, i.e. without remissions.

3.3 All other convicted female prisoners undergoing the sentence of life imprisonment shall be considered for premature release after they have served atleast 10 years of imprisonment inclusive of remissions and after completion of 7 years actual imprisonment, i.e. without remissions.

3.4 Convicted prisoners undergoing the sentence of life imprisonment on attaining the age of 65 years provided he or she has served atleast 7 years of imprisonment including the remissions.

3.5 The convicted prisoners undergoing the sentence of imprisonment for life and who are suffering from terminal diseases like cancer, T.B., AIDS, irreversible kidney failure, cardio-respiratory disease, leprosy and any other infectious disease, etc. as certified by a Board of Doctors on completion of 5 years of actual sentence or 7 years of sentence including remissions.

4. INABILITY FOR PREMATURE RELEASE

The following category of convicted prisoners undergoing life sentence may not be considered eligible for premature release:

4.1 Prisoners convicted of the offences such as rape, dacoity, terrorist crimes, etc.

4.2 Prisoners who have been convicted for organised murders in a premediated manner and in an organised manner.

4.3 Professional murderers who have been found guilty of murder by hiring them.

4.4 Convicts who commit murder while involved in smuggling operations or having committed the murder of public servants on duty.

5. PROCEDURE FOR PROCESSING OF THE CASES FOR CONSIDERATION OF THE REVIEW BOARD

5.1 Every Superintendent of Central District Jail who has prisoner(s) undergoing sentence of imprisonment for life shall initiate the case of the prisoner at least 3 months in advance of the date when the prisoner would become eligible for consideration of premature release as per the criteria laid down by the State Government in that behalf.

5.2 The Superintendent of Jail shall prepare a comprehensive note in each case giving out the family and societal background of the prisoner, the offence for which he was convicted and sentenced and the circumstances under which the offence was committed. He will also reflect fully about the conduct and behaviour of the prisoner in the jail during the period of his incarceration, behaviour/ conduct during the period he was released on probation leave, change in his behavioural pattern and the jail offences, if any, committed by him and punishment awarded to him for such offence(s). A report shall also be made about his physical/mental health or any serious ailment with which the prisoner is suffering entitling his case special consideration for his premature release. The note shall contain recommendation of

the Jail Superintendent whether he favours for the premature release of the prisoner or not and in either case it shall be supported by adequate reasons.

5.3 The Superintendent of Jail shall make reference to the Superintendent of Police of the district where the prisoner was ordinarily residing at the time of the commission of the offence, for which he was convicted and sentenced, or where he is likely to resettle after his release from the jail. However, in case the place where the prisoner was ordinarily residing at the time of commission of the offence is different from the place where he committed the offence, a reference shall also be made to the Superintendent of Police of the district in which the offence was committed. In either case, he shall forward a copy of the note prepared by him to enable the Superintendent of Police to express his views in regard to the desirability of the premature release of the prisoner.

5.4 On receipt of the reference, the concerned Superintendent of Police shall cause an inquiry to be made in the matter through senior police officer of appropriate rank and based on his own assessment shall make his recommendations. While making the recommendations the Superintendent of Police shall not act mechanically and oppose the premature release of the prisoner on untenable and hypothetical grounds/ apprehensions. In case the Superintendent of Police is not in favour of the premature release of the prisoner he shall justify the same with cogent reasons and material. He shall return the reference to the Superintendent of the concerned jail not later than 30 days from the receipt of the reference.

5.5 The Superintendent of Jail shall also make a reference to the Chief Probation Officer of the State and shall forward to him a copy of his note. On receipt of the reference, the Chief Probation Officer shall either hold or cause to hold an inquiry through a Probation Officer in regard to the desirability of premature release of the prisoner having regard to his family and social background, his acceptability by his family members and the society, prospects of the prisoner for rehabilitation and leading a meaningful life as a good citizen. He will not act mechanically and recommend each and every case for premature release. in either case he should justify his recommendation by reasons/material. The Chief Probation Officer shall furnish his report/recommendations to the Superintendent of Jail not later than 30 days from the receipt of the reference.

5.6 On receipt of the report/recommendations of the Superintendent of Police and Chief Probation Officer, the Superintendent of Jail shall put up the case to the Inspector General of Prisons at least one month in advance of the proposed meeting of the Sentence Review Board. The Inspector General of Prisons shall examine the case bearing in mind the report/recommendations of the Superintendent of Jail, Superintendent of Police and the Chief Probation Officer and shall make his own recommendations with regard to the premature release of the prisoner or otherwise keeping in view the general or special guidelines laid down by the

Government of the Sentence Review Board. Regard shall also be had to various norms laid down and guidelines given by the Apex Court and various High Courts in the matter of premature release of prisoners.

6. PROCEDURE AND GUIDELINES FOR THE REVIEW BOARD

6.1 The Inspector General of Prisons shall convene a meeting of the Sentence Review Board on a date and time at the State Headquarters, an advance notice of which shall be given to the Chairman and Members of the Board at least ten days in advance of the scheduled meeting and it shall accompany the complete agenda papers, i.e. the note of the Superintendent of Jail, recommendations of Superintendent of Police, Chief Probation Officer and that of the Inspector General of Prisons alongwith the copies of documents, if any.

6.2 A meeting shall ordinarily be chaired by the Chairman and if for some reasons he is unable to be present in the meeting, it shall be chaired by the Judicial Secretary-cum-Legal Remembrancer. The Member-Secretary (Inspector General of Prisons) shall present the case of each prisoner under consideration before the Sentence Review Board. The Board shall consider the case and take a view. As far as practicable, the Sentence Review Board shall endeavour to make unanimous recommendation. However, in case of a dissent the majority view shall prevail and will be deemed to be decision of the Board.

6.3 While considering the case of premature release of a particular prisoner the Board shall keep in view the general principles of amnesty/remission of the sentences as laid down by the State Government or by Courts as also the earlier precedents in the matter. The paramount consideration before the Sentence Review Board being the welfare of the prisoner and the society at large. The Board shall not ordinarily decline a premature release of a prisoner merely on the ground that the police has not recommended his release on certain far fetched and hypothetical premises. The Board shall take into account the circumstances in which the offence was committed by the prisoner and whether he has the propensity and is likely to commit similar or other offence again.

6.4 Rejection of the case of a prisoner for premature release on one or more occasion by the Sentence Review Board will not be a bar for reconsideration of his case. However, the consideration of the case of a convict already rejected shall be done only after the expiry of a period of one year from the date of last consideration of his case.

6.5 The recommendations of the Sentence Review Board shall be placed before the competent authority without delay for consideration. The competent authority may either accept the recommendations of the Sentence Review Board or reject the same on the grounds to be stated or may ask the Sentence Review Board to

reconsider a particular case. The decision of the competent authority shall be communicated to the concerned prisoner and in case the competent authority has ordered to grant remission and order his premature release, the prisoner shall be released forthwith with or without conditions.

7. MONITORING OF CASES THROUGH THE OFFICE OF CHIEF COORDINATOR OF CUSTODIAL JUSTICE PROGRAMME, NHRC

The Committee considers that while computerized records of all the prisoners serving life sentence in the prisons of the country for a follow-up of their cases by the NHRC is extremely desirable, it does not presently seem to be feasible. Such a monitoring could only be possible, with necessary infrastructural and manpower support.

Letter to Chief Secretaries/Administrators of all States/Union Territories regarding the modified procedure/guidelines on premature release of prisoners

Case No. 233/10/97-98 (FC)
NATIONAL HUMAN RIGHTS COMMISSION
(LAW DIVISION-IV)

M.L. ANEJA
JOINT REGISTRAR (LAW)
Tel. No. 011-2336 1764
Fax No. 011-2336 6537

Sardar Patel Bhavan
Sansad Marg, New Delhi

Dated the September 26, 2003

To

All the Chief Secretaries / Administrators of States / UTs

Sub : Procedure/Guidelines on premature release of prisoners.

Ref. : Commission's letter of even number dated 8.11.99.

Sir,

The National Human Rights Commission has received a number of representations pointing out that the State Governments are applying differing standards in the matter of premature release of prisoners undergoing life imprisonment. After examining the vexed question of disparities and differing standards applied by the various States in considering the cases of prisoners serving life imprisonment for premature release under the provisions of Sections 432, 433 and 433 A of Cr.PC, the Commission had issued broad guidelines vide it's letter of even number dated 8.11.1999 for the purpose of ensuring uniformity in the matter. After considering the response received from a number of States/UTs, the Commission vide their letter of even number dated 4 April 2003 put these guidelines on hold for the time being pending re-examination of the entire issue. The Commission has now decided to modify paras 3 & 4 of its guidelines issued vide its letter of even number dated 8.11.99. Para 3 as modified is as follows :

3. **Eligibility for premature release**

3.1 Every convicted prisoner whether male or female undergoing sentence of life imprisonment and covered by the provisions of Section 433A Cr. PC shall be

eligible to be considered for premature release from the prison immediately after serving out the sentence of 14 years of actual imprisonment, i.e. without the remissions. It is, however, clarified that completion of 14 years in prison by itself would not entitle a convict to automatic release from the prison and the Sentence Review Board shall have the discretion to release a convict, at an appropriate time in all cases considering the circumstances in which the crime was committed and other relevant factors like:

a) whether the convict has lost his potential for committing crime considering his overall conduct in jail during the 14 year's incarceration;

b) the possibility of reclaiming the convict as a useful member of the society; and

c) socio-economic condition of the convict's family.

With a view to bring about uniformity, the State/UT Governments are, therefore, advised to prescribe the total period of imprisonment to be undergone including remissions, subject to a minimum of 14 years of actual imprisonment before the convict prisoner is released. The Commission is of the view that total period of incarceration including remissions in such cases should ordinarily not exceed 20 years.

Section 433A was enacted to deny premature release before completion of 14 years of actual incarceration to such convicts as stand convicted of a capital offence. The Commission is of the view that within this category a reasonable classification can be made on the basis of the magnitude, brutality and gravity of the offence for which the convict was sentenced to life imprisonment. Certain categories of convicted prisoners undergoing life sentence would be entitled to be considered for premature release only after undergoing imprisonment for 20 years including remissions. The period of incarceration inclusive of remissions even in such cases should not exceed 25 years. Following categories are mentioned in this connection by way of illustration and are not to be taken as an exhaustive list of such categories :

a) Convicts who have been imprisoned for life for murder in heinous cases such as murder with rape, murder with dacoity, murder involving an offence under the Protection of Civil Rights Act, 1955, murder for dowry, murder of a child below 14 years of age, multiple murder, murder committed after conviction while inside the jail, murder during parole, murder in a terrorist incident, murder in smuggling operation, murder of a public servant on duty.

b) Gangsters, contract killers, smugglers, drug traffickers, racketeers awarded life imprisonment for committing murders as also the perpetrators of murder committed with pre-meditation and with exceptional violence or perversity.

c) Convicts whose death sentence has been commuted to life imprisonment.

3.2 All other convicted male prisoners not covered by section 433A, Cr.PC undergoing the sentence of life imprisonment would be entitled to be considered for premature release after they have served at least 14 years of imprisonment inclusive of remission but only after completion of 10 years actual imprisonment, i.e. without remissions.

3.3 The female prisoners not covered by section 433A Cr.PC undergoing the sentence of life imprisonment would be entitled to be considered for premature release after they have served at least 10 years of imprisonment inclusive of remissions but only after completion of 7 years actual imprisonment, i.e. without remissions.

3.4 Cases of premature release of persons undergoing life imprisonment before completion of 14 years of actual imprisonment on grounds of terminal illness or old age etc. can be dealt with under the provisions of Art. 161 of the Constitution and old paras 3.4 and 3.5 are therefore redundant and are omitted.

4. **Inability for Premature Release**

Deleted in view of new para 3.

All the States/UTs are requested to review their existing practice and procedure governing premature release of life convicts and bring it in conformity with the guidelines issued by the Commission.

Yours faithfully,

Sd/-
Joint Registrar (Law)

Other Instructions / Guidelines Pertaining to Human Rights in Prisons

Letter to Chief Justices of all High Courts with regard to human rights in prisons

Justice J.S. Verma
Chairperson
(Former Chief Justice of India)

राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission
सरदार पटेल भवन, संसद मार्ग, नई दिल्ली-110001 भारत
Sardar Patel Bhawan, Sansad Marg, New Delhi-110001 INDIA

January 1, 2000

Dear Chief Justice,

As you are aware, one of the important functions entrusted to the National Human Rights Commission under the Protection of Human Rights Act, 1993, is to visit the prisons, study the conditions of the prison inmates and suggest remedial measures. During the last five years the Members of the Commission and its senior officers have visited prisons in various parts of the country and have been appalled by the spectacle of overcrowding, insanitary conditions and mismanagement of prison administration. The problem is further compounded by lack of sensitivity on the part of the prison staff to the basic human rights of the prisoners.

The State Prison Manuals contain provisions for District and Sessions Judges to function as ex-officio visitors to jails within their jurisdiction so as to ensure that prison inmates are not denied certain basic minimum standards of health, hygiene and institutional treatment. The prisoners are in judicial custody and hence it is incumbent upon the Sessions Judges to monitor their living conditions and ensure that humane conditions prevail within the prison walls also. Justice Krishna Iyer has aptly remarked that the prison gates are not an iron curtain between the prisoner and human rights. In addition, the Supreme Court specifically directed that the District and Sessions Judges must visit prisons for this purpose and consider this part of duty as an essential function attached to their office. They should make expeditious enquiries into the grievances of the prisoners and take suitable corrective measures.

During visits to various district prisons, the Commission had been informed that the Sessions Judges are not regular in visiting prisons and the District Committee headed by Sessions Judge / District Magistrate and comprised of Senior Superintendent of Police is not meeting at regular intervals to review the conditions of the prisoners.

Indeed in most of the jails, there is a predominance of undertrials. Many of them who have committed petty offences are languishing in jails, because their cases are not being decided early for reasons which it is not necessary to reiterate. The District Judges during their visits can look into the problem and ensure their speedy trial. The Supreme Court in its several judgements has drawn attention to this fact and to the attendant

problems in prison administration arising therefrom. The Supreme Court has also emphasised the need for urgent steps to reduce their numbers by expeditious trial and thereby making speedy justice a facet of Article 21 of the Constitution a reality.

You may consider giving appropriate instructions to the District & Sessions Judges to take necessary steps to resolve the acute problem which has the impact of violating a human right which is given the status of constitutional guarantee.

I would be grateful for your response in this matter.

With regards,

Yours sincerely,

Sd/-

(J.S. Verma)

To

Chief Justices of all High Courts

Letter to Chief Secretaries / Administrators of all States / Union Territories regarding guidelines on supply of reading material to prisoners

No. 68/5/97-98
National Human Rights Commission
(Law Division-V)

E. I. Malekar
Asstt. Registrar (Law)

March 1, 2000

To

Chief Secretaries / Administrators
of all States /UTs.

Sub : Complaint from Shri Y.P. Chibbar.

Sir,

The case above mentioned was placed before the Commission on 28.2.2000 whereupon it has directed as under:

> "The guidelines are approved. They be sent to Chief Secretary of all States/ Union Territories for being circulated to all concerned persons in their respective jurisdictions for compliance on the question of supply / availability of reading material to the prisoners. Compliance report be sent within eight weeks."

I am, therefore, to forward herewith a copy of the Commission's guidelines and to request you to submit the compliance report in the matter by 24.4.2000, positively for placing it before the Commission.

Encl : As stated

Your faithfully,

Sd/-

Asstt. Registrar (Law)

Guidelines on Supply of Reading Material to Prisoners

The Commission has been seized with the question of the nature and extent of reading materials to which prisoners should have access. Having carefully considered this matter, the Commission would like to lay down the following guidelines on this subject :

i) As prisoners have a right to a life with dignity even while in custody, they should be assisted to improve and nurture their skills with a view to promoting their rehabilitation in society and becoming productive citizens. Any restrictions imposed on a prisoner in respect of reading materials must therefore be reasonable.

ii) In the light of the foregoing, all prisoners should have access to such reading materials which are essential for their recreation or the nurturing of their skills and personality, including their capacity to pursue their education while in prison.

iii) Every prison should, accordingly, have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books and prisoners should be encouraged to make full use of it. The materials in the library should be commensurate with the size and nature of the prison population.

iv) Further, diversified programmes should be organized by the prison authorities for different groups of inmates, special attention being paid to the development of suitable recreational and educational materials for women prisoners or for those who may be young or illiterate. The educational and cultural background of the inmates should also be kept in mind while developing such programmes.

v) Prisoners should, in addition, generally be permitted to receive reading material from outside, provided such material is reasonable in quantity and is not prohibited for reasons of being obscene or tending to create a security risk. Quotas should not be set arbitrarily for reading materials. The quantity and nature of reading material provided to a prisoner should, to the maximum extent possible, take into account the individual needs of the prisoner.

vi) In assessing the content of reading materials the Superintendent of the Jail should be guided by law; he should not exercise his discretion arbitrarily.

The Commission recommends that the above-stated guidelines be used by the competent authorities, in all States and Union Territories, to modify the existing rules and practices prevailing in prisons wherever they might be at variance with these guidelines.

Letter to Directors General of Police/Inspectors General of Police of all States/Union Territories/Commissioner of Police (Delhi) on submission of reports on human rights violations

स० कुमार
महा निदेशक (अन्वेषण)
S. KUMAR
Director General (Inv.)

राष्ट्रीय मानव अधिकार आयोग
सरदार पटेल भवन, संसद मार्ग,
नई दिल्ली-110001 भारत
National Human Rights Commission
Sardar Patel Bhawan, Sansad Marg,
New Delhi-110001 INDIA

17th February, 2004

Dear

On receipt of complaints regarding human rights violations, the Commission seeks reports or comments from the senior police officials. It has been noticed that in many such cases these officers get the matter enquired by a junior officer and forward the report of that officer to the Commission without any comments, which is not a proper way of dealing with the matter.

2. I have been directed by the Commission to convey that in all such cases the senior officers should examine the report of the junior officers and make their own comments while forwarding the same to the Commission.

3. Kindly acknowledge receipt.

Yours sincerely.

Sd/-
(S. Kumar)

To

All Directors General of Police of States and UTs.
Inspectors General of Police of Andaman & Nicobar, Chandigarh and Pondicherry.
Addl. IGP of Dadar & Nagar Haveli.
Commissioner of Police, Delhi.
SP Lakshadweep.

VI. Rights of Women

Maintenance Allowance for Divorced Women

Letter to Secretary, Department of Women & Child Development, Government of India regarding increase in the maintenance allowance for divorced women

N. Gopalaswami (IAS)
Secretary General

राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

September 19, 2000

Dear

1.0 Shri Ram S. Verma, Chief Secretary, Government of Haryana had sent to the Commission some suggestions made by Ms. Deepa Jain Singh, Financial Commissioner & Principal Secretary, Social Welfare Department, Government of Haryana for the consideration of NHRC. One of the issues relate to enhancement of maintenance allowance for divorced women as provided in Section 125 Cr. PC. The present provision allows maximum of Rs.500/- per month. Ms. Deepa Jain Singh suggested increasing this amount which was last fixed in 1973. It is learnt that some of the State Governments had taken the initiative to increase the amount to Rs. 2500/3000. As the procedure involved is too cumbersome for a State Government to carry out, Ms. Deepa Jain Singh had suggested recommendation by NHRC for the Centre to initiate action for amending Cr.PC.

2.0 This proposal was considered by the Commission in its meeting held on 1.9.2000. The Commission appreciated the suggestion and decided to recomend to the Government for an increase in the maximum amount of maintenance allowance to Rs.5000/- per month. May I request you to kindly take up the task of giving effect to the recommendation of the Commission and further keep the Commission informed of the action taken in this regard?

Yours sincerely,

Sd/-
(N. Gopalaswami)

Shri B.K. Chaturvedi,
Secretary,
Government of India,
Department of Women & Child Development
Shastri Bhavan, New Delhi-110001

Copy to : Shri A.K. Jain, Joint Secretary,
Ministry of Home Affairs,
Government of India,
New Delhi.

Sd/-
(N. Gopalaswami)

Nomenclature to be Used for Widows

Letter to Chief Secretaries / Administrators of all States / Union Territories on the nomenclature to be used for widows

Mrs. S. Jalaja
Joint Secretary

राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

D.O. No.3/1/2001 - PRP&P

19th June, 2001

Dear

The National Human Rights Commission considered a proposal from Uttam Environment Awareness Mission (UEAM), an NGO in Jammu & Kashmir that the words such as WIDOW, VIDHVAH, BEVAH, RANDI, etc. used in the records of Revenue Department, School, Employment and other spheres of life, be declared as 'DEAD WORDS' for the unfortunate woman who loses her life partner. At a time when she is already grief-stricken, referring to her with such unpleasant usage of words adds further to her depression and creates a psychological crisis in her. In its meeting held on 16.3.2001, the Commission has, therefore, agreed that in place of the word 'widow', the expressions 'Wife of late', 'Zauja Marhoom' as well as 'Dharmpatni Swargiya' could be used by Governments for all official purposes, especially in the official records.

I shall be grateful if appropriate instructions / directions are issued to all the Ministries / Departments and other concerned organisations and Action Taken Report sent to me within four weeks.

With kind regards,

Yours sincerely,

Sd/-

(S. Jalaja)

To

Chief Secretaries/Administrators of all States / Union Territories.

Combating Trafficking in Women and Children

Letter to Chief Secretaries / Administrators of all States / Union Territories requesting them to appoint Nodal Officers and furnish data required for the Action Research on Trafficking in Women and Children

Mrs. S. Jalaja
Joint Secretary

राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

D.O. No.25/1/2001 - PRP&P

30th May, 2002

Dear

A Focal Point on the Human Rights of Women, including matters relating to Trafficking was set up in the Commission last year at the instance of the UN High Commissioner for Human Rights. As a part of its activities an Action Research Programme on Trafficking in Women and Children in India has been taken up by the NHRC in partnership with UNIFEM. The Research Study proposes to cover the States / UTs of Uttar Pradesh, Bihar, West Bengal (Kolkata), North-Eastern Region, Rajasthan, Maharashtra (Mumbai), Goa, Andhra Pradesh (Hyderabad), Karnataka (Bangalore), Kerala, Tamil Nadu (Chennai), Pondicherry and Delhi. The Institute of Social Sciences (ISI), 8, Nelson Mandela Road, New Delhi-110 070 has been identified as the nodal NGO for coordinating the research. Given the nature of the above study, this work can be done only with the help and support of the State Governments concerned.

2. This project was discussed in the meeting of the Chief Secretaries and the Directors General of Police held at New Delhi on 30.04.2002 and a presentation was made by Shri P.M. Nair, IPS, presently Nodal Officer appointed for this particular study by the NHRC. In the above mentioned meeting it was requested that :

(a) Each State Government should identify an appropriate officer as their Nodal Officer to deal with the issues relating to trafficking in women and children, who should be well acquainted with the facts and circumstances in the concerned State and should represent the departments of police, welfare, labour as well as the Department of Women and Child Development. The name, address, telephone, fax and e-mail of this Nodal Officer should be communicated immediately to the Institute of Social Sciences and to the NHRC.

(b) The Director General of Police of all States get the data regarding trafficking cases for the last 6 years (1.1.96 to 31.12.2001) collated and forward the same, positively before end of June 2002, to the Institute of Social Sciences in the address mentioned above. The details of the data required are mentioned in the enclosed format.

(c) The Chief Secretaries of all States should identify an appropriate officer to collect the data regarding trafficked victims lodged in various Remand Homes/After Care Homes, Shelter Homes, etc. The details of the data required are mentioned in the enclosed format. This data should also be forwarded to the Institute of Social Sciences, New Delhi by end June 2002.

(d) A meeting of the Nodal Officers of all the States is proposed to be organized during July 2002. Data received from the States will form part of the discussion. It is, therefore, essential that the information required in Para (a) above and the data required in Para (b) and (c) above is forwarded to the Institute of Social Sciences within the time frame indicated.

3. The concerned agencies would be approaching the officials of the State Government at the appropriate time, with a letter of authorization under the signature of Dr. George Mathew, Director of Institute of Social Sciences or Mr. P.M. Nair, the NHRC Nodal Officer on Trafficking Issues. It is requested that all assistance may please be rendered for facilitating the research.

4. The Action Research Programme also involves the sensitization of the concerned authorities, and includes advocacy, campaigns, etc. that would facilitate prevention of trafficking, and also activities relating to rehabilitation and reintegration of the victims of trafficking. The key resource persons in the Action Research (Dr. George Mathew; Mr. Sankar Sen, IPS (Retd.); Mr. P.M. Nair, IPS and Prof. B.S. Baviskar) would be interacting with the concerned officials and agencies of the various States, as and when required.

The Commission would be happy to receive any suggestions in this regard from the State Governments.

With kind regards.

Yours sincerely,

Sd/-

(S. Jalaja)

To

The Chief Secretaries/Administrators of all States / UTs.

Encl : As above.

ANNEXURE

Format for Data Required Regarding Trafficking in Women and Children in India

Data required from the Directors General of Police of all States/Commissioner of Police, Delhi

1. Copies of Government orders, notification, circulars, memoranda, police orders, standing orders, etc. issued in this connection.

2. Copies of Rulings/Judgments by the High Courts, if any, on the subject.

3. Details on the number of cases registered, year wise, during the last 6 years (w.e.f. 1st January 1996 to 31st December 2001) under the Immoral Traffic Prevention Act as well as the relevant sections of IPC (importation, or buying and selling of girls, abduction/kidnapping of women and children for any type of exploitation, etc.)

4. The number of persons, year wise, arrested by police during the last 6 years (1.1.96 to 31.12.01), indicating age and sex of the arrestees.

5. The method of disposal of the case by the police (how many charge sheeted, how many cases closed, how many pending, etc.).

6. The age and sex of the charge sheeted persons

7. The method of disposal by the court, year wise, (how many convicted, how many acquitted/discharged, how many pending).

8. The age and sex of the convicted persons.

9. Year wise data regarding missing persons (only with respect to women and children) during the last 6 years (1.1.1996 to 31.12.2001). The data should specify the number of persons reported missing, number recovered/retrieved and number untraced so far. The data should be disaggregated with respect to males and females as well as adult and child (less than 18).

10. Profiles of some trafficked victims, abusers, traffickers, officials in the law enforcement machinery, etc., which could be used as case study.

11. Any 'Good Practices' which could be highlighted on any issue relating to prevention of trafficking, prosecution of traffickers and protection/rehabilitation of victims.

12. The difficulties in law enforcement and suggestions, if any.

Data required from the Chief Secretary/Secretary, Department of Women and Child Development/Secretary, Department of Welfare of the various State Governments

1. A copy of the notification issued by the State Government u/s 13 of the Immoral Traffic Prevention Act. If the notification has not yet been issued, the same may be indicated.

2. Copies of any study/research, on the subject organized by the State Government/ State agencies.

3. Data regarding the trafficked victims being lodged in the various Remand Homes/ After Care Home/Shelter Homes, etc., for the last 6 years (1.1.1996 to 31.12.2001).

4. Profile of any trafficked victim in the various Homes, which could be used as case study.

5. Action plans and steps initiated by the State Governments in matters relating to trafficking, including rehabilitation/reintegration of victims, economic/social empowerment, public awareness, gender sensitization, etc.

6. Suggestions, if any, with respect to any aspect on the issue of trafficking in women and children.

Letter to Chief Secretaries / Administrators of all States / Union Territories on the Action Research Programme on Trafficking in Women and Children and the terms of reference of Nodal Officers dealing with trafficking in women and children

Mrs. S. Jalaja
Joint Secretary

राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

D.O. No.25/1/2001 - PRP&P

December 9, 2002

Sub : Action Research on Trafficking in Women and Children

Dear

This has reference to our letter No. 25/1/2001-PRP&P dated May 30, 2002 on the above subject wherein a request was made to nominate a Nodal Officer to coordinate with the NHRC on the Research Programme. We are very grateful to you for acceding to our request.

2. The Conference of the Nodal Officers of all States, organized on 29th October 2002 at the UNDP Conference Hall, New Delhi, had deliberated in detail about the Terms of Reference (ToR), duties and functions of the Nodal Officers in creating a national network for preventing and combating trafficking in women and children. The ToR which were finalized in the Conference are enclosed for information and necessary action.

3. It has been decided that each State/UT should have two (2) Nodal Officers, one representing the Police Department (dealing with investigation, detection, prosecution and prevention of trafficking) and another Nodal Officer representing the welfare agencies dealing with rescue, rehabilitation, reintegration and economic/social empowerment of the victims and prospective victims. It is, therefore, requested that all States / UTs may accordingly appoint 2 Nodal Officers each, if not already done. Any change or addition in the appointment of the Nodal Officers may kindly be intimated to us as well as to Shri Sankar Sen, Senior Fellow, Institute of Social Sciences (ISS), 8, Nelson Mandela Road, Vasant Kunj, New Delhi-110 070.

4. During the Conference it transpired that the Nodal Officers of the State/UT representing the welfare agencies should be empowered to coordinate the activities of related departments like Welfare, Home, Labour, Women and Child Development, etc. It is, therefore, requested that appropriate mechanisms may be kindly devised by the State/ UT Governments to facilitate this coordination. It is suggested that a Coordination Committee

may be constituted in each State, under the chairmanship of the Nodal Officer, and involving representatives from all related departments/NGOs dealing with trafficking in women and children.

With kind regards,

Yours sincerely,

Sd/-

(S. Jalaja)

Encl : As above

To

The Chief Secretaries/Administrators of all States/UTs.

Copy alongwith enclosure, forwarded for information to:

(i) The Directors General of Police of all States/UTs.

(ii) Shri Sankar Sen, Senior Fellow, Institute of Social Sciences (ISS), 8, Nelson Mandela Road, Vasant Kunj, New Delhi-110 070.

Terms of Reference of Nodal Officers dealing with Trafficking in Women and Children

A Focal Point on the Human Rights of Women, Including Matters Relating to Trafficking was set up in the NHRC in the year 2001, at the instance of the UN High Commissioner for Human Rights. As part of its activities, an Action Research Project on Trafficking in Women and Children in India has been taken up by the NHRC in partnership with the UNIFEM. The Institute of Social Sciences (ISS), New Delhi is carrying out the research programme. In order to facilitate this research and to deal with the issues relating to trafficking in women and children, the NHRC had desired all State Governments and the concerned agencies of the Central Government to appoint Nodal Officers. Accordingly, the respective Governments have appointed the Nodal Officers.

The first all-India Conference of these Nodal Officers was organized by the NHRC, UNIFEM and ISS on 29th October 2002 at the UNDP Conference Hall, New Delhi, as part of the Action Research. After intense discussions and detailed deliberations the following decisions were made in this Conference :

Considering the serious dimensions of violations of Human Rights involved in the trafficking of women and children, for several purposes, which include sexual and non-sexual abuse and exploitation, it was decided to develop a committed national network involving all stakeholders, to combat and prevent trafficking in women and children. Accordingly, it was decided that the work profile of the Nodal Officers will include short-term and long-term plans. It will be dynamic in nature, with adequate scope for reorientation of the functions and duties, as and when required, especially with reference to the specific requirements of the States / agencies concerned. It was further decided that the duties and functions of the Nodal Officers to start with, will be as follows :

1. To facilitate the Action Research in the concerned States in all respects, viz. liaison of the research partner with the various departments/institutions (including Police, Home, Welfare, Labour, Immigration, Emigration, Border Management, Women and Child Development, etc.).

2. The Nodal Officer will facilitate the researchers (of the NHRC Research Project on Trafficking in Women and Children) in getting/collecting the data, documents, information and reports, etc., and also help interaction and discussion with the various functionaries in the State.

3. The Nodal Officer will be the catalytic and coordinating agency in the State Government with respect to all aspects of prevention and combating of trafficking in women and children. Therefore, they will facilitate exchange of information and materials between the Government and the research partner in the Action Research.

4. The Nodal Officer will act as a facilitator in approaching the Government concerned with regard to the action programmes that emanate from, or during, the Action Research or as a follow-up of the developments during the research process.

5. The Nodal Officer will identify the resource persons, institutions in the concerned State, and keep a list of all such resource persons so that their services could be called for and utilized as and when required.

6. The Nodal Officer will identify the appropriate NGOs with responsibility and commitment and will be the key link between the State and the NGOs in all aspects relating to prevention and combating trafficking.

7. The Nodal Officer will be the central point in the State for the national network being established, in combating trafficking in women and children, including matters of rehabilitation of victims rescued from other States.

8. The Nodal Officer will, eventually, facilitate the Resource Center in the States, as regards all information and action with respect to trafficking in women and children.

9. The Nodal Officer will be the key person to ensure the protection of Human Rights of the victims and safeguarding their interests.

10. The Nodal Officer will act as the liaison officer for the NHRC in the concerned State for implementing its various directives regarding trafficking in women and children.

11. The Nodal Officer will be responsible for submission of reports on the implementation of ITPA and the National Plan of Action. They will also help in the recommendation of appropriate NGOs for GOI grants.

Combating Sexual Harassment of Women at Work Place

Letter to the Minister for Law, Justice & Company Affairs, Government of India regarding constitution of sexual harassment complaints committee as per Supreme Court guidelines

Justice J.S. Verma
Chairperson
(Former Chief Justice of India)

राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

June 26, 2002

Dear Shri Arun Jaitley,

In 1998, the Department of Personnel & Training, by OM No. 11013/10/97-Estt. (A) dated 13.2.98 requested all Ministries/Departments to initiate steps to implement the guidelines contained in the Supreme Court judgement in Vishaka vs. State of Rajasthan and others in the Ministries/Departments as well as their subordinate offices, autonomous & public sector organizations under their administrative purview by setting up complaints committees to deal with complaints of sexual harassment.

Secretary, Ministry of Labour by his D.O. Letter No. S-27016/1/97-C&WL-II dated November 2, 1997 addressed to the Chief Secretaries of State Governments requested immediate action to implement the above guidelines; including setting up of complaints committees to process complaints of employees about sexual harassment.

Reminders dated November 15, 2000 were sent to all Ministries/Departments and to the Chief Secretaries of all States by the Secretary, Deptt. of Women & Child Development, Ministry of Human Resource Development. Another reminder has been sent by the same Ministry on November 12, 2001.

Despite these reminders, we are informed that many Ministries/Departments have not yet set up such complaints committees. Their list is at Annexure-I.

Many State Governments have also not responded. Their list is at Annexure-II.

These lists have been forwarded to us at our request by the Secretary, Deptt. of Women & Child Development, who is the Chairman of the Nodal Committee constituted by the Govt. of India to monitor this matter.

In the meanwhile CCS Rules have been amended to make sexual harassment a misconduct inviting disciplinary action. However, the Commission received some complaints that even where a complaints committee existed, there was unnecessary duplication of work in investigation of such complaints. After the receipt of a report of

investigation from the complaints committee, the matter was reinvestigated by the disciplinary committee. To avoid such duplication, the consequent harassment to the complainant and at times contradictory outcomes, the Secretary, Deptt. of Personnel & Training agreed with the suggestion of NHRC that the investigation by the complaints committee should be deemed to be the investigation on behalf of the Disciplinary Committee.

The Department of Law took objection to any amendment to the CCS Rules for this purpose on the ground that this is contrary to the existing provisions.

NHRC has obtained an opinion from Shri P. Chidambaram, Senior Advocate, on this question which speaks for itself. I enclose a copy of the opinion (Annexure-III).

I would appreciate your taking an initiative in this matter for making suitable amendments in the CCS Rules and making it mandatory under the CCS Rules to constitute a complaints committee as per the Supreme Court Guidelines to, *inter alia,* investigate complaints of sexual harassment, and to provide that its report should form the basis for the Disciplinary Committee to take necessary action.

I am sure, you will agree that without the necessary consequential steps being taken to implement the Vishaka judgement in letter and spirit, the menace of sexual harassment at work places can not be curbed. The commitment of our nation to gender justice does not brook any further delay in the completion of this task.

With regards,

Yours sincerely,

Sd/-

(J.S. Verma)

Hon'ble Shri Arun Jaitley
Minister for Law, Justice & Company Affairs,
Govt. of India
New Delhi

Encl. as stated

ANNEXURE - I

Ministries/Departments who have not intimated the setting up of a Complaints Committee

1) Department of Agricultural Research & Education
2) Department of Chemical & Petrochemicals
3) Department of Company Affairs
4) Department of Culture
5) Department of Defence
6) Department of Defence Production & Supplies
7) Department of Defence Research & Development
8) Ministry of Disinvestment
9) Ministry of Environment & Forests
10) Department of Expenditure
11) Department of Health
12) Department of Heavy Industries
13) Department of Indian Systems of Medicine & Homeopathy
14) Ministry of Information & Broadcasting
15) Department of Justice
16) Department of Land Resources
17) Ministry of Mines
18) Department of Ocean Development
19) Department of Pensions & Pensioner's Welfare
20) Ministry of Planning
21) Ministry of Power
22) Department of Public Enterprises
23) Ministry of Railways
24) Ministry of Social Justice & Empowerment
25) Ministry of Urban Development & Poverty Alleviation

ANNEXURE - II

State Governments/UTs who have not intimated the setting up of Complaints Committees

1) Andhra Pradesh
2) Chhatisgarh
3) Goa
4) Himachal Pradesh
5) Mizoram
6) Orissa
7) Uttaranchal
8) Andaman & Nicobar Islands
9) Chandigarh

ANNEXURE - III

Opinion of Shri P. Chidambaram, Senior Advocate

Opinion is sought by the National Human Rights Commission (NHRC) on the feasibility of amending the Central Civil Services (Classification, Control and Appeal) Rules to reflect the letter and spirit of the judgement of the Supreme Court in Vishaka vs. State of Rajasthan.

Pursuant to the directions given by the Supreme Court in the above case and the guidelines and norms laid down therein, the NHRC appears to have taken up the matter with the Government of India, Ministry of Personnel, Public Grievances and Pensions. The Government responded by amending the Central Civil Services (Conduct) Rules, 1964 on 13th February, 1998. Rule 3C was inserted which prohibited a Government servant from indulging in any act of sexual harassment of any woman at her work place. Government also issued O.M. No. 11013/10/97-Estt. (A) dated 13th February, 1998 setting up a complaint mechanism to ensure time-bound treatment of complaints of sexual harassment. The guidelines and norms laid down by the Supreme Court were also circulated. The complaint mechanism provides for a Complaints Committee headed by a woman. The Complaints Committee is required to look into complaints and make an annual report to the Government department concerned. The Department is required to take action on the said reports. Where the conduct reported amounts to a specific offence, the guidelines require that criminal proceedings shall be instituted and where the conduct amounts to misconduct as defined in the service rules, the guidelines require that appropriate disciplinary action should be initiated.

It has been reported to the NHRC that even where, after an enquiry, the Complaints Committee reported that a case of sexual harassment had been established, Departments referred the matter to the Disciplinary Authority under the CCS (CCA) Rules and the entire matter was enquired into *de novo* under the said rules. It has also been reported to the NHRC that the disciplinary proceedings invariably ended in the exoneration of the accused, thus rendering the work of the Complaints Committee infructuous.

The NHRC, therefore, raised the issue with the Department of Personnel and Training and suggested that the CCS (CCA) Rules may be amended so that the proceedings before the Complaints Committee would be treated as the disciplinary

proceedings. After consulting the Department of Legal Affairs, Ministry of Law, Justice and Company Affairs, the Government has responded that under the CCS (CCA) Rules, 1965 it is the Disciplinary Authority who has to conduct the enquiry under the said rules or under the provisions of the Public Servants (Inquiries) Act, 1850 and that the disciplinary proceedings required to be conducted under Rule 14 for imposing major penalty cannot be substituted by an enquiry by the Complaints Committee. The Government also appears to have taken the view that the Complaints Committee does not have the requisite expertise and therefore it would not be desirable to entrust the enquiry to such a Committee.

The NHRC has, therefore, raised a number of questions and I shall now proceed to answer them:

(1) Is there any bar, legal or otherwise, to the amendment of CCS (CCA) Rules, 1965 and in particular Rule 14(2) thereof in order to provide for a Complaints Committee which would act as Disciplinary Committee in case of a complaint of sexual harassment?

Ans: In my view, there is no bar, legal or otherwise to amend the CCS (CCA) Rules, 1965 and, in particular, Rule 14(2). It is possible to insert sub-rule 3 to provide that:

"Notwithstanding anything contained in sub-rules (1) or (2), where there is a complaint of sexual harassment within the meaning of Rule 3C of the CCS (Conduct) Rules, 1964 the Disciplinary Authority may itself inquire into or appoint the Complaints Committee established in each Ministry/Department as the authority to inquire into the truth thereof, and the Complaints Committee shall be deemed to be the Inquiring Authority for the purpose of these rules."

Consequential amendments, if necessary, may be made to the other rules.

(2) Is there any bar, legal or otherwise, to amend the said Rules to provide for an appropriate procedue in consonance with principles of natural justice to be followed by the Complaints Committee while inquiring into a complaint of sexual harassment?

Ans: Since under the amendment proposed by me the Complaints Committee will be the Inquiring Authority, it is expected to follow all the rules contained in the CCS (CCA) Rules applicable to proceedings before the Inquiring Authority. If these rules are followed, there can be no question of violation of principles of natural justice.

(3) Can a separate body be prescribed under the Rules to inquire into complaints of sexual harassment?

Ans: In my view, it is possible to appoint the Complaints Committee as the Inquiring Authority to inquire into the complaints of sexual harassment.

(4) Can a Complaints Committee which is to act as a Disciplinary Committee have an outside expert (NGO) conversant with the issue of sexual harassment as a member?

Ans: In the amendment proposed by me, the Complaints Committee will act as the Inquiring Authority. It will submit its report to the Disciplinary Authority. It is the Disciplinary Authority who will impose the punishment. This alone will be consistent with Article 311 of the Constitution of India. I think the distinction between the Inquiring Authority and the Disciplinary Authority should be kept in mind. So far as having an outside expert as a member of the Complaints Committee, in my view there should be no bar because such a person would be a member of the Inquiring Authority.

(5) Can a Complaints Committee which is to act as the Disciplinary Committee be headed by a woman and have not less than half of its members as women?

Ans: In my view, it is possible to provide that the Complaints Committee, that will act as the Inquiring Authority, shall be headed by a woman. It would not be desirable to have too many persons as members of the Inquiring Authority. In my view, it would be sufficient to have 3 or 5 members in the Complaints Committee that will act as the Inquiring Authority under the CCS (CCA) Rules.

Sd/-

(P. CHIDAMBARAM)
Senior Advocate

8th January, 2002

Letter to the Chief Justice of India on prevention of sexual harassment of women at work place

Justice J.S. Verma
Chairperson
(Former Chief Justice of India)

D.O. No. 3/3/2001 - PRP&P
राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

15 November, 2002

Dear Chief Justice,

As you are aware, the problem of combating sexual harassment at work places is a matter of concern to the Supreme Court, and this issue was examined in depth by the Supreme Court in the 'Vishaka vs. State of Rajasthan' judgement in which detailed guidelines for protection of women have been laid down. These guidelines, *inter alia,* make it mandatory for employers and other responsible persons in work places, and other institutions, to implement the law by taking all necessary steps. It also imposes an obligation on employers to set into motion the complaint mechanism, which involves setting up of a 'Complaints Committee'.

It has, however, been brought to the notice of the Commission that the guidelines issued by the Supreme Court are yet to be implemented by many institutions and organizations/institutions in the public and private sectors. The Commission is naturally concerned about the faithful implementation of the Vishaka judgement at all work places.

In a meeting with Advocates held recently in the Commission to discuss this issue, it was pointed out that if the 'Vishaka guidelines' are to be implemented in letter and spirit, the judiciary at all levels also needs to adopt these since Courts also are work places of women. In addition, to raising this issue at the meeting, one of the Senior Advocates has also written a letter to this effect (copy enclosed.)

The Commission will therefore be grateful if the Supreme Court under your able leadership considers the issue in detail, and take all the necessary steps in this behalf for implementation of the Vishaka judgement at all levels of the judiciary, as well.

With warm personal regards,

Yours sincerely,

Sd/-

(J.S. Verma)

Justice Shri G.B. Patnaik
Chief Justice of India,
5, Krishna Menon Marg,
New Delhi-110 011.

Encl. as stated

RAJU RAMACHANDRAN
Senior Advocate, Supreme Court

Hon'ble Mr. Justice J.S. Verma,
Chairperson,
National Human Rights Commission,
New Delhi.

30th July, 2002

Sub : Sexual harassment in the legal profession.

Respected Justice Verma,

My colleagues at the Bar and I are grateful to the NHRC for inviting us for a meeting at the NHRC on 29th July, 2002 on the important subject of sexual harassment in the legal profession. All of us would do our utmost to see that Vishaka is implemented in our profession through the Bar Associations and that appropriate mechanisms are put in place at the earliest.

I must however point out that for a woman lawyer, the "workplace" comprises not just her senior's chamber, the bar library, canteen or corridor but also the Court-room. There are well known instances of women lawyers feeling that the behaviour of Judges towards them has been inappropriate. If Vishaka is to be implemented in letter and spirit, the judiciary at various levels needs to be included. I would earnestly request you to think of an appropriate message to the judiciary in this regard.

With regards,

Yours sincerely,

Sd/-

(Raju Ramachandran)

VII. Rights of Children

Prohibiting Child Marriage

Letter to Chief Minister of Rajasthan regarding prohibition of child marriage in the state

Justice Ranganath Misra
Chairperson

राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

9th May, 1995

My Dear Chief Minister,

As you are well aware, the Child Marriage Act has been in force since 1929. The thrust of the legislation has been to prohibit child marriage and have regulatory human conduct to bring about a change in social perception.

The Act has been in force for over 65 years. It may have restrained people from resorting to child marriage in some pockets, but so far as your State is concerned, we find that the practice is very much prevalent even today. A press clipping from the editorial of 'The Hindu' dated 29 April, 1995 is enclosed for your perusal.

You would agree that the prevalence of the practice of child marriage in that degree is a stigma on society.

We would suggest that positive steps should be taken by the State Government to sensitise people through the print and electronic media as also otherwise so that the society may swerve away from the practice and utilimately discard this conduct at the earliest.

With regards,

Yours sincerely,

Sd/-

(Ranganath Misra)

Encl. As above

Shri Bhairon Singh Shekhawat
Chief Minister,
Government of Rajasthan,
Jaipur.

THE HINDU, 29th APRIL, 1995

An outrageous custom

Child Marriage, which has been widely prevalent in Rajasthan, is the vilest form of social barbarity brought forward from a superstitous medieval past. While forty years and more of post-Independent India have served to awaken the social conscience of the community to myriad forms of oppression and injustice. Rajasthan with its impenetrable barrier of illiteracy continues to remain a fortress of antediluvian cultural perversions including sati and child marriages. Incredible though it may sound, the writ of successive elected governments in Rajasthan has not availed against the sway of superstition over the predominant social culture of the region. Child marriages continue to be annual rituals in most parts of Rajasthan and not only in the backward districts such as Jaisalmer, Barmer, Jalore and Nagore. That there is no rural-urban divide in the social sanction accorded to child marriages in the State in complete violation of the law, is a telling comment on the utter lack of human sensitivity of generations of politicians who have been supposed to have provided leadership in the State.

This year, according to reports, thousands of child marriages are imminent in Rajasthan on May 2, the traditional Akha Teej, regarded as an all-proof auspicious day for marriages. Children in age groups 5-15 years are said to be the main targets of over-zealous parents who would not rest content until the marital rites are solemnised. The connivance and even the patronage of the big wigs in government and the so-called guardians of the law is obviously the vital-ingredient in the bizarre ceremonies which are held year after year. Will the Bhairon Singh Shekawat Government go along with the massive transgression of the law or muster the will to put down the atrocity against little children, who are trapped into life-long marital ties without an inkling of understanding of all that it entails? The BJP as a political organisation seeking to capture power at the Centre, can rightly be expected to clarify its position on this monumental shame of child marriages and on whether an elected government in the State should wink at the monstrosity of it all.

What must cause consternation is the sophisticated attempts to rationalise child marriage which are being made by some misguided intellectuals. A specious theory put forward by one Dr. S.G. Kabra, described as technical advisor to the Rajasthan Voluntary Health Association beats them all. According to this apologist of child marriages, even though marital rites are conducted for brides of the age group 5-15 years, these are strictly not child marriages but "early adolescent marriages" because the bride goes to the residence of her in-laws only after attaining the age of 19 years. The absurdity of the argument hardly needs elaboration but it would suffice to point out that the injustice of a marital alliance without the consent of the two parties cannot be trivialised. Nor can the obnoxious evil of child marriage with its attendant incidence of child widowhood be tolerated in any progressive social system which is anchored on the inalienable personal rights of the individual. It is nothing short of deception to use bits and pieces of demographics such as fertility data or record of medical termination of pregnancies. In order to uphold a patently criminal outrage against young children. It is time that the Government in Rajasthan asserts itself against the obscurantist bandwagon rather than be beguiled by diversionary exercises in casuistry.

Reporting on Custodial Deaths/Rapes in Juvenile/Children's Homes

Letter to Chief Secretaries/Administrators of all States/Union Territories on the reporting of deaths/rapes in Juvenile/Children's Homes within 24 hours

R.V. Pillai
Secretary General

राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

September 11, 1996

To

The Chief Secretary/Administrator,
All State Governments/Union Territories.

Sir/Madam,

The National Human Rights Commission at its meeting held on 22 July, 1996 discussed the occurrence of deaths and rapes in Juvenile Homes. During the discussions it was felt that information on similar incidents in other homes run under different statutes should be collected and compiled alongwith information on incidents of deaths and rapes in Juvenile Homes. These could cover the following institutions:

(I) Set up under Juvenile Justice Act, 1986:

- (i) Observation Homes
- (ii) Juvenile Homes
- (iii) Special Homes

(II) Set up under Probation of Offenders Act, 1958:

- (i) Probation Homes

(III) Set up under Immoral Traffic (Prevention) Act, 1956:

- (i) Reception Centres
- (ii) Short Stay Homes
- (iii) Nari Niketan/After Care Homes

(IV) Set up under Prevention of Beggars/Begging Act:

- (i) Reception Centres
- (ii) Beggars Homes

(V) Set up under Borstal Act

(i) Borstal Institutions

2. In order to enable a compilation of reports on the incidents of deaths and rapes in these homes, the NHRC had directed that all the DMs and SPs may be instructed to report to the Secretary General of the Commission about such incidents within 24 hours of occurrence or of these officers having come to know about such incidents. Failure to report promptly would give rise to presumption that there was attempt to suppress the incidents.

3. It is accordingly requested that the District Magistrate/Senior Superintendent of Police may be given suitable instructions in this regard so on to ensure prompt communication of incidents of deaths and rapes in these homes to the undersigned.

4. It is possible that some of the institutions listed above are not functioning in your State. If so, a list of institutions and statutes under which they have been set up may also be sent to the Commission for record and reference.

Yours faithfully,

Sd/-

(R.V. Pillai)
Secretary General

Copy to:

Secretary (Welfare Department),
All State Governments/Union Territories.

Letter to Chief Secretaries/Administrators of all States/Union Territories to ensure prompt communication of incidents of custodial deaths/rapes in Juvenile/Children's Homes

Subodh C. Verma
Registrar (Law)

राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission
Sardar Patel Bhawan, Sansad Marg,
New Delhi-110 001.

February 07, 2002

To

The Chief Secretary / Administrator
of all States/UTs.

Sir/Madam,

Vide letter No. 10/9/96-Research dated 11.09.1996 (copy enclosed*) you were requested to give suitable instructions to all the DMs/SPs to ensure prompt communication of incidents of custodial deaths/custodial rapes in the homes which were covered under Juvenile Justice Act, 1986, Probation of Offenders Act, 1958, Immoral Traffic (Prevention) Act, 1956, Prevention of Beggar/Begging Act and Borstal Act.

Since some of the Homes were not found functioning properly, the matter was again placed before the Commission on 07.12.2001 for further consideration. After deliberations the Commission, has directed that the existing instructions on the subject may be further modified as under:

(a) an inquest by a Magistrate should immediately be conducted in all cases of deaths in Homes and the inquest report sent to the Commission expeditiously. The Magistrate should also comment whether there has been any medical negligence on the part of the authorities concerned;

(b) in case of any allegation of rape/unnatural offence committed on any inmate of the Protection Home, a criminal case should be registered immediately. It should be supervised by an officer not below the rank of Dy. S.P. and the case be investigated by an officer not below the rank of Inspector of Police. A copy of the FIR and the supervision note should invariably be sent to the Commission soon after the first intimation;

(c) if any foul play is suspected in the magisterial inquest, the post-mortem examination should invariably be done to ascertain the cause of death and the post-mortem report sent to the Commission;

* For copy of the letter refer to page nos. 199 & 200.

(d) in all cases of death of an inmate where the initial inquest by a Magistrate indicates some foul-play, magisterial inquiry should be made mandatory.

It is accordingly requested that the DMs/SPs may be given suitable instructions in this regard so as to ensure prompt action on the aforesaid directions of the Commission.

Yours faithfully,

Sd/-
(Subodh C. Verma)

Encl: As Above.

Prohibiting Employment of Children below the Age of 14 years as Domestic Help by Government Servants

Letter to Minister of State in the Ministry of Personnel, Public Grievances & Pensions on prohibiting the employment of children below the age of 14 years as domestic help by government servants

Justice M.N. Venkatachaliah
Chairperson

राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

February 10, 1997

Dear Minister,

This Commission has been receiving disquieting reports about the employment of children as domestic servants and subjected to long and laborious hours of work. The Commission has also received complaints against Government servants engaging children below the age of 14 years as domestic servants. You will kindly agree that this is simply unacceptable.

The Commission feels that employing children (below and upto the age of 14 years) for work by anyone is reprehensible more so by any Government servant. In its meeting held on 10 January, 1997, the Commission decided to recommend that an appropriate rule be included in the conduct rules of Government servants, both Central and State, which while prohibiting such an employment would also make it a misconduct inviting a major penalty.

I, therefore, request you kindly to take appropriate steps to introduce a rule to the Central Civil Service (Conduct) Rules, 1964 as under:-

"Central Civil Services (Conduct) Rules, 1964 shall be amended by adding the following as Rule 22-A:-

(i) No Government servant shall employ to work any children below the age of 14 years;

(ii) breach of sub-rule (i) shall be misconduct attracting a major penalty."

I am addressing a separate letter to the Chief Ministers of all States with a request to provide a similar rule in regard to State Government servants.

With regards,

Yours sincerely,

Sd/-

(M.N. Venkatachaliah)

Shri S.R. Balasubramanian
Minister of State in the
Ministry of Personnel, Public
Grievances and Pensions,
North Block, New Delhi

Letter to Chief Ministers of all States & Administrators of Union Territories on the amendment of Conduct Rules of government servants to prohibit the employment of children below the age of 14 years as domestic help

Justice M.N. Venkatachaliah
Chairperson

No. 8/11/97-Research
राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

March 3, 1997

Dear

This Commission has been receiving disquieting reports about the employment of children below the age of 14 years as domestic help by the Government servants and often subjected to long and laborious hours of work and on occasions, subjected to torture. You will kindly agree that this is simply unacceptable.

In the light of a recent judgement of the Supreme Court upholding 'the right to free and compulsory education for all children until they complete the age of 14 years' as a Fundamental Right, you will agree that the practice of employing children as domestic help does not comport with the spirit of this pronouncement.

The Commission feels that employing children (below and upto the age of 14 years) for work by anyone is reprehensible more so by any Government servant. In its meeting held on 10 January, 1997, the Commission decided to recommend that an appropriate rule be included in the conduct rules of Government servants, both Central and State, which while prohibiting such an employment would also make it a misconduct inviting a major penalty. Accordingly, I have addressed a letter to the Minister incharge of the Ministry of Personnel, Public Grievances and Pensions, Government of India with a request to introduce a rule (Rule 22-A) in the Central Services (Conduct) Rules, 1964, as under:

"(i) No Government servant shall employ to work any child below the age of 14 years;

(ii) breach of sub-rule (i) shall amount to misconduct attracting a major penalty."

I request you kindly to add a similar rule in the conduct rules of State Government servants. I shall be grateful if you could take early action in this regard.

With regards,

Yours sincerely,

Sd/-

(M.N. Venkatachaliah)

To

Chief Ministers of all States & Administrators of UTs.

Letter to Chief Ministers/Administrators of States/Union Territories reiterating amendment of Conduct Rules of government servants prohibiting employment of children below the age of 14 years as domestic help

Justice J.S. Verma
Chairperson

राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

December 13, 1999

Dear

The Commission has been concerned and disturbed on the reported employment of children below 14 years of age as domestic help by the Government servants. The Commission had come across newspaper reports and cases before it where children were known to be engaged in long and laborious hours of work and even subjected to torture. The Commission took up this matter with the Central and State Governments. Recently the Central Government has issued the required notification amending the CCS (Conduct) Rules prohibiting such employment. To our earlier communication, your Government had informed that the matter was under examination. However, we have not heard of any final decision taken on the matter.

Looking to the fact that such an inhuman practice which degrades and devalues the childhood of the young of this country, I am sure your Government will hasten to carry out the necessary amendment to the Conduct Rules applicable to the Government servants. It is needless to draw attention to the specific provisions in the Constitution of India which expect such measures to be taken by the Government when it is also the duty of every citizen to abide by the Constitution (see Article 51 A {a}). May I request you to kindly inform me of the decision taken by your Government in this regard?

With regards,

Yours sincerely,

Sd/-

(J.S. Verma)

To

Chief Ministers/Administrators who had not amended the Conduct Rules of Government Servants of their respective States/Union Territories.

Child Labour in Slaughter Houses

Letter to Chief Secretaries/Administrators of all States/Union Territories on child labour in slaughter houses

N. Gopalaswami, IAS
Secretary General

D.O. No. 8/6/2001-PRP & P
राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

9th April, 2001

Dear

As you are aware, Article 24 of the Constitution prohibits child labour in hazardous occupations. More particularly there is a ban on child labour in Abattoirs/Slaughter Houses under the Child Labour (Prohibition & Regulation) Act, 1986. The Commission, however, has been receiving complaints that child labour is still prevailing in slaughter houses all over India. The Commission considered the matter in the sitting dated 16.3.2001 and decided to send notices to all concerned in the matter. I request you to kindly see that necessary instructions are issued to concerned authorities by the department responsible for eradication of child labour in your State, to inspect the slaughter houses under their jurisdiction and ensure that child labour, if any, is stopped, the owners are prosecuted for violating the law and all children released are provided the wherewithal to get schooling and other facilities.

I shall be obliged if compliance report is sent latest by the end of May, 2001 to enable me to apprise the Commission about the situation in your State.

Thanking you and with regards,

Yours sincerely,

Sd/-

(N. Gopalaswami)

To

Chief Secretaries/Administrators of all States/Union Territories.

VIII. Elimination of Manual Scavenging

Letter to various authorities on the issue of elimination of manual scavenging

Justice Ranganath Misra
Chairperson

D.O. No. 15 (19) / 96-Coord.
राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

October 23, 1996

My Dear Minister,

The National Human Rights Commission has the Statutory responsibility for reviewing the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation; review the factors that inhibit the enjoyment of human rights and recommend appropriate remedial measures (Section 12 (d) and (e) of the Protection of Human Rights Act, 1993).

2. The Commission is deeply concerned about the inhuman and degrading practice of manual handling of night soil, which is prevalent even today in certain parts of the country. The Commission considers this to be an affront to human dignity and a major social evil. Despite the launching of a National Scheme of Liberation and Rehabilitation of Scavengers and their Dependents in March, 1992, the Commission has noted that the implementation of this Scheme is dismal, except in a few States. In a number of States, the survey to identify the beneficiaries is still not complete. In many others, where the survey was conducted, there were complaints that certain localities and families have been left out. Further, it is distressing to note that most of the States have been unable to achieve the targets set for training and rehabilitation.

3. With a view to providing a focal point for coordinating work presently being done as also to motivate and involve NGOs and other organisations, a meeting was held in the office of the Commission on 23 September, 1996. It was attended by senior officials of the Ministries of Welfare, Urban Affairs and Employment, the National Commission for Safai Karamcharis, HUDCO, as also by the Founder of Sulabh International alongwith Chairmans of its different wings.

4. The participants of the above meeting welcomed the initiative taken by the Commission. The unanimous view that emerged at the meeting was that the problem of manual scavenging was a human right issue and that there was a need for coordinated efforts involving both governmental and non-governmental agencies. The participants further felt that Government should first set an example by totally eliminating manual scavenging from its buildings. Accordingly, they urged this Commission to address letters to all State Governments as well as to certain Central Ministries with a request to replace dry latrines, wherever they exist in the buildings owned by them, with pour-flush ones. It

was felt that this would have a great impact on the public mind and would enhance awareness.

5. The Commission is in full agreement with them and takes this opportunity to urge you to issue instructions to all concerned for expeditious action. As it involves the crucial issue of right to life with dignity, I implore you to set a definite time-frame for the implementation of this measure.

6. Our nation is on the threshold of celebrating the 50th Anniversary of our Independence. Even after the lapse of five decades since Independence, it is a matter of great shame that thousands of scavenger families still live a socially degrading life. The Father of the Nation, Mahatma Gandhi, whose Birth Anniversary we have just observed, strove all his life for ameliorating the working and living conditions of this section of society and to restore to them their human dignity. The age-old practice of scavenging has to be stopped.

7. The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 prohibits the employment of manual scavengers as well as construction or continuance of dry latrines. This landmark legislation by the Parliament has to be translated into concrete measures. Keeping the various constitutional provisions and the above legislation as well as the protection of human rights in view, I urge upon you to set an example on this score by replacing dry latrines, wherever they exist in the buildings owned by your Ministry, with pour-flush ones, and fix a date for achieving this target.

8. I shall be grateful for a line in response.

With regards,

Yours sincerely,

Sd/-

(Ranganath Misra)

1. Dr. U. Venkateswarlu
   Minister for Urban Affairs & Employment

2. Shri Mulayam Singh Yadav
   Minister for Defence

3. Shri Ram Vilas Paswan
   Minister for Railways

4. Shri S.R. Bommai
   Minister for Human Resource Development

5. Chief Ministers of all States

Letter to Chief Ministers with a request to adopt the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993

Justice M.N. Venkatachaliah
Chairperson

D.O. No. 11/1/99-PRP & P
राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

24 January, 1997

Dear

May I invite your kind attention to the Commission's earlier letter dated 23 October 1996 from Justice Sri Ranganath Misra reiterating need to eliminate manual scavenging?

The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 was enacted by the Parliament on 5 June, 1993. The Act provides, among other things, that no person shall engage in or be employed for manually carrying human excreta or construct or maintain a dry latrine. The contravention of this prohibition is made punishable.

Nearly three and a half years have elapsed since the Act was passed. Our Commission understands that a number of communications have been addressed to you by the Ministry of Urban Affairs & Employment as well as by the National Commission for Safai Karamcharis urging your State to adopt the Central legislation which is brought forth as an ameliorative measure in an important area of human dignity.

I would, therefore, request you kindly to take such steps as may be necessary to have an appropriate resolution passed in the State Legislature adopting the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 in relation to your State.

With regards,

Yours sincerely,

Sd/-

(M.N. Venkatachaliah)

To

Chief Ministers of all States.

Letter to Chief Ministers/Administrators of all States/Union Territories on elimination of manual scavenging

Justice J.S. Verma
Chairperson
(Former Chief Justice of India)

राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

14 August, 2001

Dear

This relates to the inhuman and degrading practice of manual handling of night soil, which is unfortunately still prevalent in many parts of the country. Letters had been written by my predecessors, Justice Ranganath Misra and Justice M.N. Venkatachaliah in October 1996 and January 1997 (copies enclosed for ready reference*). Thereafter, I have been constantly reminding the State Governments to expeditiously abolish the practice of manual scavenging. It is a national shame that this demeaning practice continues even after five decades of independence.

The NHRC had suggested to both the Central and State Governments various measures that needed to be taken, such as adoption and strict implementation of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 by States, and the replacement of dry latrines by pour-flush latrines. It is matter of regret that the response has been both uneven and inadequate. I am afraid, it appears to be the result of lack of sensitivity and the needed commitment to the cause. While I appreciate that translation of intent into administrative action may take time, it can hardly be disputed that half a century is a long enough period to achieve this result, so important for 'assuring the dignity of the individual', promised in the Constitution of India.

To this end, it is proposed that the Union Government and the State Governments jointly work to ensure, that by 2 October 2002, there are no dry latrines left in the country. This would, *inter alia,* involve:

(i) Conversion of dry latrines into pour-flush latrines;
(ii) Not permitting the construction of any dwelling house or building which does not have pour-flush latrines.

I am separately addressing this issue to the Prime Minister and the Central Government.

I am sure that with your personal intervention in the matter, this laudable object can be achieved.

With regards,

Yours sincerely,

Sd/-

(J.S. Verma)

To

Chief Ministers/Administrators of all States/Union Territories.

* For copies of the letters refer to page nos. 215 to 217.

IX. Rights of Mentally Ill Persons

Letter to Chief Secretaries/Administrators of all States/Union Territories requesting them to certify that no mentally ill patient is kept in chains, in any of the mental hospitals/institutions in their States/Union Territories

P.C. SEN
Secretary General

D.O. No. 11/12/2001-PRP & P
राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

December 20, 2001

Dear

The National Human Rights Commission (NHRC) received a complaint from Prof. (Mrs.) Dr. Nazneen, Head of Department of English, Sri Meenakshi Government College for Women, Madurai regarding the plight of mentally ill patients staying in Sultan Alayudeen Durgah, Goripalayam, Madurai (Tamil Nadu). The Commission took cognizance of the matter and constituted a Committee to visit the Durgah and make specific recommendations for the management of such patients. The Report submitted by the Committee was accepted by the Commission on the 3rd of January, 2001 and a copy of the Report was sent on the 15th of January 2001 to the Government of Tamil Nadu for implementation. Reminders were sent on the 10th of May and the 31st of July, 2001.

You may have read about the shocking incident of 28 inmates of Badhusha Private Mental Asylum in Erwadi of Ramanathapuram district of Tamil Nadu, having lost their lives in a fire on the 6th of August, 2001, due primarily to the fact that they were chained. The Commission is greatly disturbed by the incident and the failure of the State Government to prevent the mishap and, taking a serious view in the matter, has now decided to request the Chief Secretaries of all States and Union Territories to certify, within a period of one month, that no mentally ill patient is kept in chains, in any of the mental hospitals/ institutions in their States/Union Territories. This is essential to prevent recurrence of any such tragic incident in future.

I am desired to request you to kindly have the requisite report sent by the 31st of January, 2002 so that the Commission could be apprised of the position.

With regards,

Yours sincerely,

Sd/-

(P.C. SEN)

To

Chief Secretaries/Administrators of all States/Union Territories.

X. On Bonded Labour

Letter to Labour Secretaries of all States/Union Territories requesting for quarterly reports on bonded labour

Mrs. S. Jalaja
Joint Secretary

D.O. No. 2/1/97 - PRP & P
राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

February 19, 2002

Dear

The National Human Rights Commission took up the monitoring of implementation of the Bonded Labour System (Abolition) Act 1976 in 1997 consequent upon the responsibility devolved by the Hon'ble Supreme Court in its order dated 11.11.1997. The Commission has so far focussed its attention to the 13 most bonded labour-prone States as identified by the Ministry of Labour. It is now keen to expand the area of monitoring and evolve a suitable mechanism to constantly review the bonded labour situation and implementation of the provisions of the Bonded Labour Act in all the States.

You will agree that latest and accurate information is most important factor for the successful execution of any project. The information collected from various States and also from the Union Ministry of Labour was placed before the Commission in the meeting held on 7.12.2001. The Commission decided that quarterly reports on the status of bonded labour may be obtained in the prescribed proforma from the State Governments requesting them to also indicate the period for which the reports pertain to in respect of cases reported so far.

As desired by the Commission, two proformae are enclosed. Proforma-I is for information relating to status as on 31.12.2001 and Proforma-II for sending quarterly reports. Kindly have this information sent at the earliest. It will be highly appreciated if the information in Proforma - I is sent by 15th March, 2002 and the quarterly report is sent regularly by the end of the month following the quarter to which the information pertains.

With regards,

Yours sincerely,

Sd/-

(S. Jalaja)

To

Labour Secretaries of all States/UTs.

Proforma - I

Proforma for Obtaining Information Relating to the Release and Rehabilitation of Bonded Labourers

Name of the State : _____

1. No. of bonded labourers (BLs) identified as per survey conducted on the directions of Supreme Court given in 1997.

2. No. of BLs identified thereafter, year-wise, upto the end of December, 2001.

3. Total : (1 + 2)

4. No. of BLs released out of the number mentioned against S.No.3 above.

5. No. of migrant BLs transferred to the State from other States.

6. No. of migrant BLs transferred to other States.

7. Total number of BLs with the State required to be rehabilitated.

8. No. of BLs rehabilitated so far.

9. No. of BLs yet to be rehabilitated.

10. Expected time frame by which remaining BLs proposed to be rehabilitated.

11. No. of Employers booked under the Bonded Labour System (Abolition) Act 1976 in the State with year-wise details of disposal of cases.

Proforma - II

Quarterly Report regarding Identification, Release and Rehabilitation of Bonded Labourers

State : _____ **Quarter Ending :** _____

1. No. of Bonded Labourers (BLs) pending release from bondage at the end of last quarter.

2. No. of bonded labourers identified during this quarter.

3. Total : (1 + 2)

4. No. of BLs released out of the number mentioned against S.No.3 above.

5. No. of BLs transferred to the State by other States.

6. No. of BLs transferred to other States.

7. Total number of BLs required to be rehabilitated by the State.

8. No. of BLs rehabilitated during the Quarter.

9. No. of BLs yet to be rehabilitated.

10. No. of Employers who offended the Bonded Labour System (Abolition) Act 1976:

    (a) As per last report ;

    (b) Booked during the current quarter :

    (c) Details of disposal of cases during the quarter :

XI. Rights of the Disabled

Letter to Chief Ministers/Administrators of all States/Union Territories concerning rights of the disabled

Justice J.S. Verma
Chairperson
(Former Chief Justice of India)

D.O. No.11/8/2002 - PRP & P
राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

27 December, 2002

Dear

The National Human Rights Commission has been greatly concerned with the problems of persons with disability. Its endeavour in this area has been to bring in a paradigm shift in the approach motivated by charity towards the disabled to one based on rights. With this perspective in view, the Commission has recently reviewed the implementation of various legislations/programmes for the disabled both by the Central and State Governments.

Disability being a State subject, the State Governments are to bring the area of human rights of the disabled to the center stage of the developmental agenda. However, it has been brought to the notice of the Commission that the implementation of the policies and programmes for the disabled, by the States has been tardy. Accordingly, the Commission has identified some of the priority areas which require your immediate attention, as:

- Constitution of a task force to frame the policies and monitor its implementation.
- Formulation of 'State Disability Policy and Plan of Action.'
- Vertical integration of schemes of all departments relating to the disabled.
- Provide employment opportunities for the disabled in public and private sector.
- Creation of barrier-free infrastructure for the disabled in accordance with the provisions of the Disabilities Act.
- Capacity building/sensitization programmes for administrators and field functionaries.
- Review and Amendment of Rules and Regulations that have discriminatory provisions or lack enabling provisions for the enjoyment of full range of human rights by persons with disabilities.

- Enforcement of the provisions of Mental Health Act, 1987.

I shall be grateful if you could bestow your personal attention to these issues to ensure that the State Disabilities Action Plan is formulated and implemented in a time bound manner with monitoring of the progress of existing schemes for the disabled.

With regards,

Yours sincerely,

Sd/-

(J.S. Verma)

To

Chief Ministers/Administrators of all States/UTs.

Letter to various Union Ministers concerning the rights of the disabled

Justice J.S. Verma
Chairperson
(Former Chief Justice of India)

D:O. No.11/8/2002 - PRP & P
राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

30 December, 2002

Dear Minister,

The National Human Rights Commission has been greatly concerned with the problems of persons with disability. Its endeavour in this area has been to bring in a paradigm shift in the approach motivated by charity towards the disabled to one based on rights. With this perspective in view, the Commission has recently reviewed the implementation of various legislations/programmes for the disabled both by the Central and State Governments.

Disability being a rights issue, the Government needs to bring human rights of the disabled to the center stage of the development agenda. However, it has been brought to the notice of the Commission that the implementation of the policies and programmes for the disabled, by the ministries and departments of Government of India has been inadequate. The Commission has identified some of the priority areas which require your immediate attention, as :

- Constitution of a task force to frame a National Policy and plan for creation of barrier-free infrastructure for the disabled in accordance with the provisions of the Disabilities Act.
- Introduction and rationalization of schemes for persons with disabilities.
- Minimum standards to ensure quality in the services provided by NGOs and government institutions to the disabled.
- Vertical integration of disability perspective in the developmental schemes of all departments relating to the disabled.
- Rehabilitation of disabled child beggars.
- Social security for women with disabilities.
- Review and Amendment of Laws, Rules and Regulations that have discriminatory provisions or lack enabling provisions for the enjoyment of full range of human rights by persons with disabilities.

I shall be grateful if you could bestow your personal attention to these issues to ensure that the rights of the disabled recognized in the law are earnestly granted to them, without any further avoidable delay.

With regards,

Yours sincerely,

Sd/-
(J. S. Verma)

To

1. Minister of Parliamentary Affairs, Information Technology & Communications.
2. Minister of Rural Development.
3. Minister of Human Resource Development and Science and Technology & Ocean Development.
4. Minister of Urban Development & Poverty Alleviation.
5. Minister of Social Justice & Empowerment.
6. Minister of Civil Aviation.
7. Minister of Railways.
8. Minister of Information & Broadcasting.
9. Minister of Health and Family Welfare.
10. Minister of Law and Justice.
11. Minister of State for Road Transport and Highways.
12. Minister of State in Prime Minister's Office & MOS for Programme Implementation & Statistics.

XII. Human Rights and Population Policy

Letter to Chief Ministers/Administrators of all States / Union Territories on human rights issues involved in the population policies framed by some of the state governments in the light of the National Population Policy, 2000 (NPP)

Justice J.S. Verma
Chairperson
(Former Chief Justice of India)

D.O. No. 3/1/2000 PRP & P
राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

17th January, 2003

Dear

The National Human Rights Commission has been concerned about the human rights issues involved in the population policies framed by some of the State Governments in the light of the National Population Policy, 2000 (NPP) of the Government of India. With a view to have a closer look at these issues, the Commission, in collabortion with the Department of Family Welfare, Ministry of Health and Family Welfare and the United Nations Population Fund (UNFPA) organized a two-day Colloquium on Population Policy-Development and Human Rights on 9th and 10th of January, 2003 at the India Habitat Centre, New Delhi. The Health/Family Welfare Secretaries of States / UTs were also invited to make presentations.

I have no doubt that you will consider the Declaration and the recommendations adopted in the Colloquium (copies enclosed) and take necessary steps for their implementation. Nonetheless, I would request you to initiate action on the following:

1. Review the Population Policy, if already framed by the State Government in the light of the concerns especially the violation of human rights of the vulnerable sections including women and children, expressed in the Declaration and the recommendations; or keep in mind such concerns if the policy is yet to be framed by you.

2. To desist from following a coercive approach in the guise of incentives or disincentives, which in some cases violate the principle of voluntary informed choice and human rights of people especially the rights of women and the rights of the child.

3. To provide for regular, accessible, affordable, good quality health care especially to women at the grass-roots level and to commit necessary resources for the purpose.

4. To take effective measures to prevent female foeticide and infanticide.

5. To take effective measures to prevent child marriages and enforce more effectively the Child Marriage Restraint Act, 1929.

6. To review and amend the domestic laws wherever necessary on the subject, or to enact new laws wherever required, in consonance with the international human rights conventions to promote and protect free and informed choices in the exercise of reproductive rights while aiming at population stabilization.

7. To take up comprehensive human resource development/awareness programmes incorporating a rights perspective for officials and non-officials, and to provide adequate financial resources for the purpose.

I shall be grateful if you could kindly let us know the progress of activities taken in the matter.

With regards,

Yours sincerely,

Sd/-

Encl : As above **(J.S. Verma)**

To

Chief Ministers/Administrators of all States/Union Territories.

Declaration

The Department of Family Welfare, Ministry of Health and Family Welfare; the National Human Rights Commission and the United Nations Population Fund (UNFPA) jointly organized a two-day Colloquium on Population Policy - Development and Human Rights, on 9th and 10th of January, 2003 at the India Habitat Centre, New Delhi. The participants of the Colloquium appreciated the efforts made by the State Governments / Union Territories and the Union Government to frame and implement population policies, and after having deliberated on these population policies and the related human rights issues, agreed to :

- Recognize the importance of having a population policy framed by the Central and State Governments to achieve population stabilization goals of the country.

- Further recognize that population policies ought to be a part of the overall sustainable development goals, which promote an enabling environment for the attainment of human rights of all concerned. Therefore, a rights-based approach is imperative in the framing of the population policies. Further, it is important that framing of such a policy and its implementation require a constant and effective dialogue among diverse stakeholders and forging of partnerships involving all levels of Government and civil society.

- Appreciate the efforts of the Government of India in framing the National Population Policy, 2000 of India which affirms the commitment of the Government to its overriding objective of economic and social development, improving the quality of lives of people through education and economic empowerment, particularly of women, providing quality health care services, thus enhancing their well being, and providing them with opportunities and choices to become productive assets in society, as a necessary concomitant to population stabilization and reduction in fertility rates.

- Note with concern that population policies framed by some State Governments reflect in certain respects a coercive approach through use of incentives and disincentives, which in some cases are violative of human rights. This is not consistent with the spirit of the National Population Policy. The violation of human rights affects, in particular the marginalized and vulnerable sections of society, including women.

- Note further that the propagation of a two-child norm and coercion or manipulation of individual fertility decision through the use of incentives and disincentives violate the principle of voluntary informed choice and the human rights of the people, particularly the rights of the child. Similarly, the use of contraceptive targets results in undue pressure being put by service providers on clients.

- Call upon the Governments of States / Union Territories to exclude discriminatory / coercive measures from the population policies that have been framed, or are proposed. States in which such measures do not form part of the policy, but are nonetheless implemented, also need to exclude these discriminatory measures.

- Emphasize that in a situation where the status of women is low and son preference is prevalent, coercive measures further undermine the status of women and result in harmful practices such as female foeticide and infanticide.

- Affirm that reproductive rights can not be seen in isolation, as they are intrinsic to women's empowerment and empowerment of marginalized sections of society. Therefore, giving priority to health, education and livelihood of women is essential for exercising these rights, as also for reduction in fertililty rates and stabilization of population.

- Acknowledge that reproductive rights set on the foundation of dignity and integrity of an individual encompass several aspects such as :

    - the right to informed decision-making, free from fear of discrimination;
    - the right to regular accessible, affordable, good quality and reliable health care;
    - the right to medical assistance and counselling for the choice of birth control methods appropriate for the individual couple;
    - the right to sexual and reproductive security, free from gender-based violence.

- Emphasize that capacity-building initiatives at all levels should mainstream rights-based perspective into various programmes.

- Further emphasize that for a successful implementation of any programme for population stabilization, a rights-based approach is far more effective than a coercive approach based on disincentives.

- Recognize that monitoring the human rights impact of policies and their implementation by governments is critical for ensuring that the policy processes conform to the rights frame work as enshrined in the Constitution of India, national laws and in international human rights instruments.

- Call upon the Central and State Governments to ensure that domestic laws on the subject promote proper exercise of reproductive rights, prevent harmful practices that derogate from a proper exercise of such rights, and protect every individual's right to a life with dignity while aiming at population stabilization and ensure allocation of adequate financial resources for the implementation of a population policy founded in human rights and development.

* * * * * * *

RECOMMENDATIONS

- State specific population policies to be formulated keeping in view the conceptual framework of NPP.

- In the light of the constitutional mandate, a rights- based dialogue needs to inform the population policy processes.

- Policy should enable equal opportunity environment.

- A revisioning of population policies is required with a fundamental shift in the approach where people in general and women in particular are not viewed as mere resources but as human agents with freedom of choice and capability.

- The means adopted for population stabilization should ensure equity implications are not violated.

- Demystifying the understanding of reproductive rights at the level of community, policy makers and programme managers.

- All the population policies should be examined for ensuring protection and promotion of human rights.

- There should be clarity and consistency in the population policies and the legislative framework, for e.g. legal age of marriage.

- Making registration of marriages and births compulsory.

- Population can be stabilized by creating an enabling environment, supportive development and inter-sectoral coordination.

- Behavioural changes not only for the community but also for those responsible for policy making, implementation and enforcement.

- Women's empowerment is not to be treated as a means to population stabilization but as an end in itself.

- Involvement of civil society and social groups in policy formulation within a rights perspective.

- Translating human rights in programme realities is critical, for e.g., access to quality health care, improving access to services and availability for information. A

transparent legal framework will help in this process. An international example cited was from Iran where investment in health services has helped in quantum leap in health services and population stabilization.

- Engage in meaningful dialogue with the state governments in an objective assessment of incentives and disincentives in a human rights framework. Initiate correctional steps for those coercive policies that are already in place.

- The two-child norm, which disempowers women both directly and indirectly, must be examined critically since it is a violation of human rights.

- Radical changes in resource allocation for ensuring the rights of the under-privileged and marginalized for equity and equal opportunity.

- Policies need to recognize that young people are sexually active and have reproductive health needs as well as rights.

- Policies need to be guided by human rights perspective bringing accountability in mainstream decision-making.

* * * * * * * *

XIII. On Illegal Trade in Human Organs

Letter to Chief Ministers/Administrators of all States/Union Territories concerning illegal trade in human organs

Dr. Justice A.S. Anand
Chairperson
(Former Chief Justice of India)

D.O. No.11/5/2001 - PRP & P
राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

29 January, 2004

Dear

The Commission is deeply concerned about the illegal trade in human organs and in particular, trade in kidneys which often involves exploitation of poor people and violation of their human rights. There are reports of organ trafficking involving clinicians, managers of clinical centers, middlemen and others. The National Human Rights Commission has come across a number of instances in which the 'compassionate donor' provision in the Organ Transplantation Act is being abused. In many cases, the donor is an unrelated and unacquainted person who is lured into donating an organ such as the kidney by financial offers made by or on behalf of the prospective recipient.

The practice of 'organ purchase' has acquired the dubious dimensions of 'organ trade' with touts operating as middlemen, and creation of allegedly false records of a compassionate donation. While several steps are reported to have been initiated in Karnataka to make the review process stricter, in the media there are disturbing reports of this pernicious practice being widespread in Tamil Nadu, Andhra Pradesh and a number of other States. This illegal trade in human organs is unethical and is a serious violation of human rights.

The Commission had constituted a Core Group of medical experts to go into issues relating to public health and human rights and in particular about the trade in human organs. They have collectively expressed the view that the clause relating to 'compassionate donation' in the Organ Transplantation Act has been frequently exploited in an unethical manner, which is violative of human rights. They have suggested certain remedial measures.

To curb this abuse, the Commission recommends that the remedial measures which are enclosed be adopted. I request you to direct the concerned authorities to implement these measures. It would also be useful if the situation is monitored at the highest level at regular intervals. It would be appreciated if a report on the action taken on the above recommendations could be sent to the Commission at the earliest.

With regards,

Yours sincerely,

(Encl: as above)

Sd/-

(A.S. Anand)

To

All Chief Ministers/Administrators of States/UTs.

ANNEXURE

Remedial Measures suggested by NHRC to all States/UTs to check illegal trade in human organs

(a) State Medical Councils should screen the records of hospitals performing organ transplants (especially kidney transplants) and estimate the proportion of transplants which have been made through a 'compassionate donor' mechanism. In case of kidney transplants, wherever the porportion has exceeded 5% of the cases performed in any of the past 5 years, the State Medical Council should initiate a full fledged enquiry into the background of the donors and the recipients, as well as a careful documentation of the follow-up health status of the donor and the nature of after care provided by the concerned hospital. Wherever police enquiries are needed for such background checks, the help of the State Human Rights Commission may be sought for providing appropriate directions to the State agencies.

(b) Cadaver Transplant programmes should be promoted to reduce the demand for 'live donors'.

(c) Facilities for chronic renal dialysis should be increased and improved in hospitals, to provide alternatives to kidney transplantation.

(d) Better facilities should be provided for transparent and effective counseling of prospective donors.

(e) Wherever possible, a mechanism should be established for independent verification of the veracity of 'compassionate donation' by a group of experts which is external to the hospital wherein the transplant procedure is proposed to be performed.

****